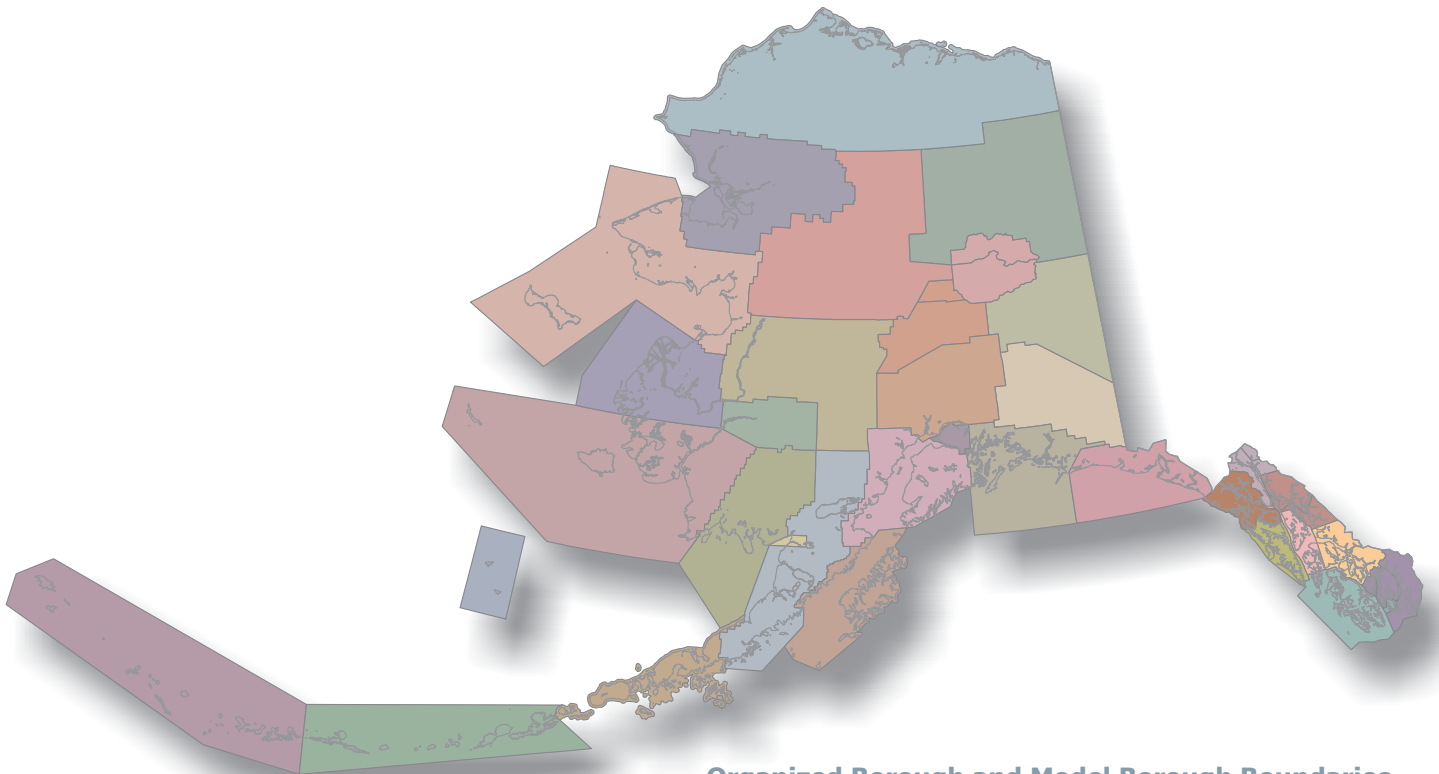


Methods by Which Borough Governments in Alaska May Be Incorporated



Organized Borough and Model Borough Boundaries

**By Dan Bockhorst and Jeanne McPherren
Local Boundary Commission Staff
Alaska Department of Community and Economic Development**

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INTRODUCTION.

Historically, three methods have been used to incorporate boroughs in Alaska. Those are referred to here as the:

- “local-action or local option method requiring voter initiation and ratification;”¹
- “legislative fiat for incorporation of particular areas;” and
- “local and special legislation allowing incorporation of particular areas.”

This paper provides a brief overview of those three methods and discusses three other methods that have yet to be utilized. Those additional methods are referred to here as:

¹The terms “local action” and “local option,” as they relate to municipal incorporation or other boundary changes, are not defined in law. Statutory references to “local action” annexation and detachment exist currently in AS 29.06.040(c), and a reference to “local action” boundary changes is in AS 29.06.040(d). There are current statutory references to “local option” with regard to merger and consolidation in AS 29.06.090(b)(2) and with regard to municipal dissolution in AS 29.06.450(a)(2).

The Borough Act of 1961, which first established statutory procedures for borough incorporation, did not specifically refer to either local action or local option. However, the 1963 Mandatory Borough Act amended AS 07.10.010 to clarify that the method for incorporation established by the Borough Act of 1961 was a “local option” method. Multiple references to the “local option” method of incorporation under AS 07.10.010 appear in the 1963 Mandatory Borough Act (Sections 2, 3(a), 3(b), and 6, ch. 52, SLA 1963). When Title 7 and Title 29 of the Alaska Statutes were combined in 1972, the reference to “local option” incorporation of “municipalities” (cities and boroughs) was not retained. No significance is ascribed to the absence of any reference to “local option” in the statute after 1972. It is noted that even though the 1961 law did not expressly refer to local option, the Alaska Supreme Court characterized it as such. See *Walters v. Cease*, 394 P.2d 670, 672 (Alaska 1964)

The Commission’s regulations generally follow the terms used in the existing statutes. References to “local action” annexation are found in Sections 150, 210, 400, and 590 of the Commission’s regulations. References to “local option” regarding merger, consolidation, and dissolution are found in Sections 230, 250, 290, 320 and 410.

The Commission’s regulations in 3 AAC 110.600, which is titled “Local action/local option elections,” do not strictly follow the statutory terms. Section 600 makes reference to “city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal dissolution, merger, or consolidation under AS 29.06.” There are no current statutory references in AS 29.04 (city reclassification) or AS 29.05 (municipal incorporation) to either local option or local action.

A thoughtful examination of the laws relating to municipal boundary changes leads to the conclusion that the terms “local action” and “local option” mean the same thing. They are proceedings that require approval by voters; or, in the case of some annexations, all property owners and resident registered voters; or adoption of a municipal ordinance for annexation of certain municipal properties. It is significant that 3 AAC 110.610 indicates that the “local action or local option” proceedings are distinct from “legislative review” proceedings under Article X, Section 12 of Alaska’s Constitution

- “initiative providing for incorporation of particular areas.”²
- “request that the Local Boundary Commission consider borough incorporation;” and
- “proposal initiated by the Local Boundary Commission.”

SECTION 1 – CONSTITUTIONAL PROVISIONS RELATING TO METHODS FOR BOROUGH INCORPORATION.

Two sections of the local government article of Alaska’s Constitution relate to methods for borough incorporation. Those are Sections 3 and 12 of Article X.

Article X, Section 3 of Alaska’s Constitution expressly addresses the establishment of boroughs. It provides:

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Article X, Section 12 provides as follows:

A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

A careful reading of Article X, Section 3 indicates the following:

- The entire geographic area of Alaska must be divided into boroughs. Those boroughs may be either organized or unorganized.

²Although the examination in this paper of methods for incorporation of boroughs is thorough, time constraints and LBC staff’s workload prevent an exhaustive review.

- Boroughs – both organized and unorganized – are to be established in a manner provided by law.³
- All boroughs – both organized and unorganized – must be established according to standards provided by law.⁴ Those standards must include population, geography, economy, transportation, and other factors.
- The boundaries of each borough must encompass a large, natural region (a maximum area and population with common interests).⁵
- The legislature must classify boroughs.
- The legislature must prescribe borough powers and functions.

³Article XII, Section 11 of Alaska's Constitution provides, in part, "As used in this constitution, the terms 'by law' and 'by the legislature,' or variations of these terms, are used interchangeably when related to law-making powers."

⁴The Local Boundary Commission has observed that standards and procedures for establishment of unorganized boroughs have never been enacted. The Borough Act of 1961 simply created one unorganized borough encompassing all of Alaska not within organized boroughs. Given the great diversity of Alaska, such a residual unit has never complied with the common-interest provision of Article X, Section 3. See *Unorganized Areas of Alaska That Meet Borough Incorporation Standards*, Local Boundary Commission, February 2003, pp. 18 – 20.

⁵This view is in harmony with the provision in Article X, Section 1 calling for minimum numbers of local governments. See *City of Douglas v. City and Borough of Juneau*, 484 P.2d 1040, 1044 (Alaska 1971). It is also reflective of the discussions in Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska* (1971), pp. 37 - 39; and Victor Fischer, *Alaska's Constitutional Convention* (1975), pp. 118 – 121. For example, Mr. Fischer states in *Alaska's Constitutional Convention* on p. 119 that the Local Government Committee at the Constitutional Convention took the view that boroughs "should be large enough to prevent too many subdivisions in Alaska" and that they "should cover large geographic areas with common economic, social, and political interests."

Mr. Fischer is recognized by the Alaska Supreme Court as "an authority on Alaska government." (*Keane v. Local Boundary Commission*, 893 P.2d 1239, 1244 (Alaska 1995).) He received a bachelor's degree from the University of Wisconsin in 1948 and a Master's Degree in Community Planning from the Massachusetts Institute of Technology in 1950. In 1955, Mr. Fischer was elected as a delegate to the Alaska Constitutional Convention held in 1955-1956. During the convention, Mr. Fischer served on both the Committee on Local Government and the Style and Drafting Committee; he held the position of Committee Secretary on the former. In 1961 –1962, Mr. Fischer received the Littauer Fellowship in public administration from Harvard University. Mr. Fischer has held several planning related positions in Alaska. He has written and co-authored a number of books and publications concerning state and local government in Alaska. In addition to *Borough Government in Alaska* and *Alaska's Constitutional Convention*, these include *The State and Local Governmental System* (1970), and *Alaska State Government and Politics* (1987). Mr. Fischer served in Alaska's Territorial House of Representatives (1957-1959) and the Alaska State Senate (1981-1986). He was a member of the faculty of the University of Alaska Fairbanks and of the University of Alaska Anchorage. At the University, he was primarily associated with the Institute for Social and Economic Research (ISER), where he was director for ten years.

- The legislature must prescribe methods for borough organization, incorporation, merger, consolidation, reclassification and dissolution.

Article X, Section 12 of Alaska's Constitution grants broad powers to the Local Boundary Commission to "consider any proposed local government boundary change" and to "present proposed changes to the legislature." As is addressed in this paper, the Constitutional Convention proceedings, case law, and other relevant materials indicates that the term "boundary change" is properly construed in a broad context to include incorporation of boroughs.⁶

SECTION 2 – LOCAL-ACTION OR LOCAL OPTION METHOD REQUIRING VOTER INITIATION AND RATIFICATION.

This method of borough incorporation was established under the Borough Act of 1961.⁷ There have been some modifications to the procedures over the past forty-three years; however, those have been relatively minor. A copy of the current statutes setting out the procedures for incorporation under this method is included in this paper as Appendix A.

In terms of the number of boroughs incorporated under this method (eight, which is half of all existing organized boroughs) and the total geographic size of those boroughs (200,537 square miles, which amounts to just over 31 percent of Alaska's lands, tidelands, and submerged lands), some might consider the method to be generally successful.

However, when examined in light of the numbers of Alaskans served by those boroughs (just 24,919, which is only 3.85 percent of Alaskans) and the time it has taken to establish them (more than 45 years), the extent to which the method can be viewed as generally successful is clearly diminished. More significantly, given the prospect for new boroughs incorporated under this method,⁸ and, in some instances, significant compromises that have been necessary to achieve incorporation under this method,⁹

⁶The Commission also has constitutional authority to establish procedures whereby boundaries may be adjusted by local action.

⁷See *Borough Government in Alaska*, pp. 72 – 74, for an overview of the Borough Act of 1961. For additional background regarding the Borough Act of 1961, see Jay Hammond, *Tales of Alaska's Bush Rat Governor* (1994), pp. 149 – 150.

⁸The Local Boundary Commission has observed that deterrents to borough incorporation "are so pervasive and so overwhelming that they impede successful incorporation of new borough governments" under the local option method. See *The Need to Reform State Laws Concerning Borough Incorporation and Annexation*, Local Boundary Commission (January 2001), p. 2.

⁹See, for example, Appendix J of *School Consolidation: Public Policy Considerations and a Review of Opportunities for Consolidation*, Local Boundary Commission and Department of Education and Early Development (February 2004). Appendix J describes the efforts involved in the formation of one borough that required four separate attempts (i.e., four petitions, four local government agency reviews, four LBC hearings, four elections, etc.) to incorporate. Even then, success came only after the
(continued . . .)

the view that it is a viable option generally for incorporation is eroded further. Many who have had an opportunity to review local government in Alaska have observed that the local option method established in 1961 represents a generally ineffective method of implementing the constitutional vision regarding borough formation.¹⁰

Table 1 lists the existing boroughs created under this method in the order in which they were incorporated. It includes information about the 2003 population of each of those boroughs as well as the current size of each borough. Relative comparisons of the population and geographic size of each borough are also provided.

TABLE 1
BOROUGHS ESTABLISHED UNDER THE LOCAL-ACTION METHOD REQUIRING
VOTER INITIATION AND RATIFICATION

BOROUGH (Current Name)	DATE OF INCORPORATION (original)	POPULATION		SIZE OF AREA	
		2003 figures	% of Total Statewide	Area (Square Miles)	% of Total Statewide
Bristol Bay Borough	10/02/62	1,105	0.17%	707	0.11%
Haines Borough	08/29/68	2,327	0.36%	2,733	0.42%
North Slope Borough	07/01/72	7,253	1.12%	94,383	14.65%
Northwest Arctic Borough	06/02/86	7,301	1.13%	38,621	6.00%
Aleutians East Borough	10/23/87	2,700	0.42%	13,530	2.10%
Lake and Peninsula Borough	04/24/89	1,628	0.25%	28,832	4.48%
Denali Borough	12/07/90	1,914	0.29%	12,687	1.97%
City and Borough of Yakutat	09/22/92	691	0.11%	9,044	1.40%
Totals		24,919	3.85%	200,537	31.13%

(. . . continued)

1968 Legislature created a new classification of borough government -- one with significantly weakened duties relating to planning, platting, and land use regulation and the capacity to provide areawide services other than education and tax assessment and collection. (Because of policy concerns over that classification of borough government, the 1985 Legislature repealed the 1968 law.) Moreover, the borough that was created had boundaries that did not conform well to the standards for incorporation. See *Borough Government in Alaska*, p. 109, n. 37. To this day, those boundaries reflect serious public policy deficiencies. See *School Consolidation*, pp. 22 – 25. Further, it is worthwhile to contrast the provision (later deleted by amendment) in the original version of House Bill No. 90 in the 1963 Legislature, which would have incorporated the entire Lynn Canal – Icy Straits Election District into a single borough, with borough incorporation developments in the region since then. In addition to the boundary deficiencies associated with the one borough, another borough was formed that encompasses only a single community that in 2003 was inhabited by only 691 people. Intense and protracted legal and political battles have been waged (and are still ongoing) in the region. To this day, much of the region remains outside any organized borough.

¹⁰See, for example, *Ibid.*, p. 17; *The Need to Reform State Laws Concerning Borough Incorporation and Annexation*, p. 5; Ronald C. Cease and Jerome R. Saroff (eds.), *The Metropolitan Experiment in Alaska*, (1968), p. 81; *Borough Government in Alaska*, p. 138; and *Municipal Government in Alaska - WHITE PAPER* <<http://www.akml.org>>.

SECTION 3 – LEGISLATIVE FIAT FOR INCORPORATION OF PARTICULAR AREAS.

The second method that has been used to incorporate boroughs was a special act of the 1963 Alaska Legislature mandating incorporation of eight particular regions. A copy of the 1963 Mandatory Borough Act (ch. 52, SLA 1963) is included here as Appendix B.

The legislative fiat method has been used only once, in 1963.¹¹ It proved to be highly effective in extending borough government to Alaska's citizens.¹² However, it generated intense debate and opposition, including efforts to repeal the 1963 Mandatory Borough Act by referendum.¹³ In addressing legal challenges to the 1963 Mandatory Borough Act, the Alaska Supreme Court stated:

The part of the constitution dealing with local government provides that all local government powers shall be vested in boroughs and cities. It also provides that the entire state shall be divided into boroughs. A means of accomplishing the constitutional objective was furnished by the legislature in a statute enacted in 1961. . .

An additional means for accomplishing the constitutional objective of establishing borough government was provided by chapter 52 SLA 1963. Here the legislature did not leave the question of the formation of boroughs to local option, as it did in the 1961 statute. Instead, in chapter 52 the legislature itself incorporated eight specifically designated and defined areas of the state as organized boroughs effective January 1, 1964, provided that they had not before that date become incorporated by location option under the 1961 law (footnotes omitted).

Walters v. Cease, 394 P.2d 670, 671- 672 (Alaska 1964).

¹¹See *The Metropolitan Experiment in Alaska*, pp. 81 – 134, for a legislative history of the 1963 Mandatory Borough Act, particularly the following on p. 81: "It was only after a series of repeated failures that in 1963 the State legislature finally exercised the authority which had previously been delegated to others." See *Borough Government in Alaska*, pp. 74 – 76, for an overview of the Borough Act of 1961. For additional background regarding the Borough Act of 1961, see *Tales of Alaska's Bush Rat Governor*, pp. 149 – 150.

¹²In less than nine months, eight organized boroughs were formed encompassing more than 80 percent of all Alaskans (in 2003, the figure was 83.6 percent) and more than 75,000 square miles of Alaska. In technical sense, four of those boroughs (those serving the regions encompassing Juneau, Sitka, Ketchikan, and Kodiak) were incorporated under the local action method discussed in Section 2 of this paper. They are included here because the 1963 Mandatory Borough Act compelled the formation of boroughs in those areas. By doing so, the Legislature avoided the infirmities of the "local-action or local option method requiring voter initiation and ratification." That is, the Legislature ensured that boroughs would be incorporated in those regions in short order with or without voter support. By doing so, the need for compromises in the establishment of boroughs in those areas was obviated.

¹³See *The Metropolitan Experiment in Alaska*, pp. 81 – 134 (e.g., it "had the distinction of being the most debated bill . . ." [p. 103]); and *Borough Government in Alaska*, p. 83 (e.g., the 1963 Mandatory Borough Act "immediately set off a number of attempts to repeal the law: requests were made for a special session of the legislature during the last months of 1963; bills to repeal the 1963 act were introduced in the 1964 session; and a referendum petition was initiated.").

A copy of *Walters v. Cease* is included with this paper as Appendix C.

The framers of Alaska's Constitution, including the members of the Local Government Committee, expressed a preference for voluntary incorporation of boroughs.¹⁴ However, Committee members also took the position that incorporation of boroughs should be compulsory in those areas that had the capacity to support regional government.¹⁵

Table 2 lists the existing boroughs created under the 1963 Mandatory Borough Act. Information is also included about the 2003 population of each of those boroughs, the current size of each borough, and relative comparisons of the population and geographic size of each borough.

TABLE 2
BOROUGHS ESTABLISHED UNDER THE LEGISLATIVE FIAT METHOD OF INCORPORATION

BOROUGH (Current Name)	DATE OF INCORPORATION (original)	POPULATION		SIZE OF AREA	
		2003 figures	% of Total Statewide	Area (Square Miles)	% of Total Statewide
Ketchikan Gateway Borough	09/06/63	13,548	2.09%	1,749	0.27%
City and Borough of Juneau	09/24/63	31,283	4.82%	3,231	0.50%
City and Borough of Sitka	09/24/63	8,891	1.37%	4,457	0.69%
Kodiak Island Borough	09/30/63	13,811	2.13%	11,470	1.78%
Fairbanks North Star Borough	01/01/64	82,214	12.67%	7,469	1.16%
Kenai Peninsula Borough	01/01/64	51,220	7.89%	19,819	3.08%
Matanuska-Susitna Borough	01/01/64	67,473	10.40%	25,196	3.91%
Municipality of Anchorage	01/01/64	274,003	42.23%	1,942	0.30%
Totals		542,443	83.6%	75,333	11.69%

¹⁴*Borough Government in Alaska* (p. 62) states:

It was anticipated by some delegates that mandatory establishment of boroughs might result in "resentment and probably a lack of good local government," even though there was a strongly held belief in the convention that most people and most communities desired home rule and self-government. It was generally held that, with proper initial preparation by the state for establishment of boroughs and with provision of state incentives for local incorporation, the transition to organized borough status could be effected relatively smoothly. No time table for such transition is indicated in the constitutional record.

¹⁵Those include the equal responsibility provision in Article I, Section 1 and, particularly, the maximum local self-government provision in Article X, Section 1. While preferring voluntary incorporation, the Local Government Committee at the Convention held the view that creation of organized boroughs "should be compulsory, with provision for local initiative." *Borough Government in Alaska*, p. 38, and *Alaska's Constitutional Convention*, p. 119.

It is noteworthy that there have been many legislative proposals subsequent to 1963 for legislative fiats to incorporate additional boroughs; however, none has been successful.

SECTION 4 – LOCAL AND SPECIAL LEGISLATION ALLOWING INCORPORATION OF PARTICULAR AREAS.

The last method that has been used to form a borough also involved an act of the Legislature. In 1974, the Alaska Legislature adopted an Act (ch. 145, SLA 1974) that allowed, but did not require, a specific area to incorporate a borough. The area in question, the greater Eagle River-Chugiak area, was part of the Greater Anchorage Area Borough at the time. Thus, the legislation allowed for voters to approve detachment from the existing borough and incorporation of a new borough. A copy of the 1974 law is included here as Appendix D.

Under the 1974 law, voters of the greater Eagle River-Chugiak area approved detachment from the Greater Anchorage Area Borough and incorporation of the Chugiak-Eagle River Borough. The new borough was officially incorporated on September 12, 1974. A legal challenge of the action immediately followed.

On April 15, 1975, the Alaska Supreme Court held that ch. 145, SLA 1974, was “local and special legislation” and violative of Article II, Section 19 of Alaska’s Constitution, which provides that, “The legislature shall pass no local or special act if a general act can be made applicable.” The Court invalidated ch. 145, SLA 1974, thereby annulling the Eagle River-Chugiak Borough. The decision (*Abrams v. State*, 534 P.2d 91, (Alaska 1975)) is included here as Appendix E.

Additional details concerning ch. 145, SLA 1974 and efforts to form an Eagle River – Chugiak area borough are provided in *Informational Materials Regarding Local Government Options for the Greater Eagle River-Chugiak Area*, Local Boundary Commission Staff, March 2004.

SECTION 5 – INITIATIVE PROVIDING FOR INCORPORATION OF PARTICULAR AREAS.

Article XI of Alaska’s Constitution provides citizens with the right to enact laws. The courts have held that this power is to be construed liberally. *Thomas v. Bailey*, 595 P.2d 1 (Alaska 1979). In that the 1963 Mandatory Borough Act was determined by the Alaska Supreme Court to be a proper “means for accomplishing the constitutional objective of establishing borough government,” it appears that there would be no impediment to creation of boroughs through a properly worded initiative that conformed to the provisions of Article XI, Sections 1 - 7. Those provisions are set out below.

Section 1. Initiative and Referendum. The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

Section 2. Application. An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

Section 3. Petition. After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the house districts of the State, it may be filed with the lieutenant governor.

Section 4. Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

Section 5. Referendum Election. A referendum petition may be filed only within ninety days after adjournment of the legislative session at which the act was passed. The lieutenant governor shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first statewide election held more than one hundred eighty days after adjournment of that session.

Section 6. Enactment. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

Section 7. Restrictions. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

SECTION 6 – REQUEST THAT THE LOCAL BOUNDARY COMMISSION CONSIDER BOROUGH INCORPORATION.

One method available for borough incorporation that has yet to be utilized is a formal request to the Local Boundary Commission for borough incorporation. The legislature has, by law, imposed a duty on the Commission under AS 44.33.812(a)(3) to “consider a local government boundary change requested of it by the legislature, the commissioner of community and economic development, or a political subdivision of the state.”¹⁶

The State Attorney General’s Office addressed the meaning of the term “boundary change” in 1964. In a letter to the Local Affairs Agency,¹⁷ the Attorney General’s Office noted:

The question is: What is a “boundary change”? Is incorporation or dissolution of a local government a “boundary change”? Clearly mergers or consolidation of local governments, as well as annexation (Fairview Public Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (1962)), involve boundary changes. But incorporations and dissolutions also necessitate changes in boundaries. Incorporation creates boundaries where none existed; dissolution obliterates them. Both involve radical change.

The Alaska Supreme Court in Fairview Public Util. Dist. No. 1 v. City of Anchorage, supra, explained the concept behind the adoption of the constitutional provision authorizing the Commission:

“ . . . that political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed in the words of the committee -- * * * lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, argument for and against boundary change can be analyzed objectively.” (p. 543)

Those who drafted the Constitution clearly intended that such vital changes as incorporation and dissolution of local government units be considered boundary changes subject to the Commission’s authority.

¹⁶AS 01.10.060 defines a city or borough government as a political subdivision. It states, “municipality” means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality.

¹⁷The Local Affairs Agency is a predecessor to the Alaska Department of Community and Economic Development. Effective September 2, 2004, the Department of Community and Economic Development will be renamed as the Department of Commerce, Community, and Economic Development.

Opinion letter to Dennis E. Cook, Local Affairs Agency, from Michael M. Holmes, Deputy Attorney General, July 13, 1964.¹⁸

A copy of that opinion letter is included here as Appendix F. Relying on that opinion, the Local Affairs Agency immediately petitioned the Local Boundary Commission to resolve a boundary dispute involving the City of Wood River and the City of Dillingham. Both city governments had been created in 1963 following petitions to separate courts.¹⁹ The boundaries of the City of Dillingham fully encompassed the boundaries of the City of Wood River.

The Local Boundary Commission held a public hearing regarding the matter in Dillingham on September 5, 1964. Following the hearing, the Commission stipulated that:

[I]f by January 1, the residents and local officials of the area had not taken positive steps toward the formation of a single city or borough capable of meeting the area's need and responsibilities in local government, the Commission would recommend a solution to the next session of the legislature.

No action was taken by the deadline imposed by the Commission. Consequently, the Commission filed a recommendation "pursuant to Sec 12, Art X of the State Constitution" with the First Session of the Fourth Alaska Legislature for dissolution of the City of Wood River. See *Recommendation for Dissolving a City in the Dillingham – Wood River Area*, Local Boundary Commission, February 2, 1965, included here as Appendix G.

The First Session of the Fourth Alaska Legislature did not disapprove of the Commission's recommendation. Hence, it took effect 45-days later.

The action was appealed to the courts. The appellants asserted that the City of Wood River was not dissolved "in the manner provided by law" and that it still existed as a municipal corporation following the action by the Local Boundary Commission.

The dispute was settled by the Alaska Supreme Court on April 1, 1968. The Court held as follows:

¹⁸The Attorney General's Office has also expressed the view before and after the 1964 opinion that a boundary change includes incorporation. See 1991 Inf. Op. Att'y Gen. (February 15; 663-91-0212); 1959 Opinions of the Attorney General, No. 30.

¹⁹At that time, city incorporation petitions were filed with the courts, not the Local Boundary Commission. AS 29.15.020 provided that petitions for incorporation of a second-class city must be filed with the superior court. AS 29.25.040 provided that a petition for incorporation of a fourth-class city must be filed with the district magistrate court. The petition for incorporation of the City of Wood River as a fourth-class city was filed with district court on April 3, 1963. The district court granted incorporation on June 30, 1963. On April 24, 1963, a petition was filed for incorporation of a second-class City of Dillingham with the superior court. On July 12, 1963, the superior court declared the City of Dillingham incorporated.

Article X, Section 7 of the Alaska Constitution provides that cities may be dissolved 'in a manner prescribed by law.' The legislature has provided for the dissolution of cities in AS 29.10.543-29.10.549, 29.25.500 and 29.80.010-29.80.050. These statutes generally provide for dissolution upon an election when the population of a city drops below a certain number, or upon a court order after a finding that a city has ceased to function as a city government. Since none of these methods was followed in the dissolution of the city of Wood River, appellants maintain that Wood River was not dissolved 'in the manner provided by law', and therefore still exists as a municipal corporation in its own right.

The local boundary commission has the constitutional authority to 'consider any proposed local government boundary change.' It may present any such proposed change to the legislature, and the change becomes effective 'forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.'^[20]

In *Fairview Public Utility District No. 1 v. City of Anchorage*^[21] we held that the authority vested in the local boundary commission by the Constitution was sufficient to effect, by means of a local government boundary change proposed by the commission, the annexation to the City of Anchorage of the Fairview Public Utility District No. 1, an area entirely surrounded by the city. The situation here is not dissimilar. The fourth class city of Wood River was encompassed within the boundaries of the second class City of Dillingham. Although the boundary commission's proposal was to confirm the boundaries of the City of Dillingham and to dissolve the city of Wood River, rather than to annex Wood River to Dillingham, the effect is the same. When the legislature failed to disapprove of the commission's proposal, the commission's local boundary change, which consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the City of Dillingham, had the effect of making Wood River a part of the City of Dillingham.

When the boundary commission's proposal for boundary change became effective, the city of Wood River was dissolved, even though the statutory procedures for dissolution of cities were not followed. The basic purpose for creating the boundary commission and conferring upon it the powers that it possesses was to obviate the type of situation that existed here where there was a controversy over municipal boundaries which apparently could not be settled at the local level. As we pointed out in the *Fairview* case, the concept that was in mind when the local boundary commission section of the

²⁰Footnote 8 in original. Alaska Const. art. X, § 12.

²¹Footnote 9 in original. 368 P.2d 540 (Alaska), appeal dismissed, 371 U.S. 5, 83 S.Ct. 39, 9 L.Ed.2d 49 (1962).

Constitution was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.^[22] The purpose of the boundary change effected in this case by the boundary commission and the legislature was to establish boundaries at a state level, and resolve a conflict that could not be properly solved at the local level, by doing away with two separate governments in a single community and avoiding multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos. When the boundary change became effective, the city of Wood River was extinguished as a municipal corporation and its property, powers and duties were then vested in the City of Dillingham.^[23]

A copy of the Alaska Supreme Court decision in the *Dillingham* case is included in this paper as Appendix H.

It is also noteworthy that the Legislature considers the term “boundary change” to include incorporation. That point was addressed in the previously-cited 1964 opinion from Deputy Attorney General Holmes as follows:

The Legislature also considers incorporation and dissolution, as well as merger and consolidation, to be boundary changes. In AS 07 (Boroughs) the Legislature gave the Commission the duty to consider and accept or reject any petition proposing incorporation (07.10.010), merger or consolidation (07.35.180), or dissolution (07.35.490) of a borough, or to change the proposed boundaries before accepting the petition. It must be presumed that the Legislature did not grant the Commission more authority than permitted by the Constitution in Article X, Section 12. Since the Legislature has given the Commission power to deal with incorporation and dissolution, as well as merger and consolidation, these must be included within the meaning of “boundary change.” The Commission, therefore, has authority to consider and propose such changes in borough boundaries to the Legislature.

More recently, the 2002 Alaska Legislature directed the Local Boundary Commission to examine Alaska’s unorganized borough to determine which areas meet the standards for borough incorporation. The House of Representatives approved “House CS for CS for Senate Bill No. 359(FIN),” which included the directive, by a vote of 35 – 0 (5 members were absent). The Senate approved the measure by a vote of 19 – 0 (1 member was absent). Then-Governor Knowles signed the bill into law as ch. 53, SLA 2002. Notably, the Legislature specified that submission of the Commission’s report called for in the legislation would not be considered as a proposal for a boundary

²²Footnote 10 in original. Fairview Pub.Util.Dist. No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

²³Footnote 11 in original. Id. at 545.

change under Article X, Section 12. Specifically, the law provided as follows (emphasis added):

Sec. 3. The uncoded law of the State of Alaska is amended by adding a new section to read:

NEW BOROUGH INCORPORATION. The Local Boundary Commission shall review conditions in the unorganized borough. By the 30th day of the First Regular Session of the Twenty-Third Alaska State Legislature, the commission shall report to the legislature the areas it has identified that meet the standards for incorporation. No portion of the report under this section constitutes a Local Boundary Commission proposal for purposes of art. X, sec. 12, Constitution of the State of Alaska.

Additionally, the 2003 – 2004 Legislature considered two legislative proposals that would have invoked the provisions of AS 44.33.812(a)(3) to require the Commission to consider incorporation of boroughs under its duty to “consider a local government boundary change requested of it by the legislature” Those measures were Senate Concurrent Resolution No. 12 and Senate Concurrent Resolution No. 17. A copy of both resolutions is attached as Appendix I. Senate Concurrent Resolution No. 12 passed the Senate; however, the resolution was not taken up by the House of Representatives.

Moreover, the issue of borough formation without a vote of the people was addressed during the Constitutional Convention. Delegate James Hurley queried, “is my idea correct that no organized borough will become effectuated without the voice of the people in the area?”²⁴ Victor Fischer, Secretary of the Local Government Committee, responded that the answer “would be ‘no’.”²⁵

Procedures under which the Commission could respond to a request that it consider borough incorporation are outlined in Section 8 of this paper.

SECTION 7 – PROPOSAL INITIATED BY THE LOCAL BOUNDARY COMMISSION.

The last method of borough incorporation addressed in this paper is a Commission-initiated action. In general, the arguments allowing the Commission to consider a local government boundary change requested of it by the legislature, the commissioner of community and economic development, or a political subdivision of the state are applicable to the Commission initiating boundary proceedings itself.

²⁴*Proceedings of the Alaska Constitutional Convention*, p. 2673.

²⁵*Id.*

The prospect that the Commission would initiate incorporation proceedings was clearly recognized by the framers of Alaska's Constitution. For example,

The minutes of the 18th meeting of the Local Government Committee at the Constitutional Convention state:

The idea was advanced that boundaries be established by a separate local government boundary commission, vested with the power to hear petitions for establishment of boundaries or for boundary changes and which could undertake such on its own initiative. The legislature would be given the power to veto or revise any decisions of such a commission (emphasis added).

When the Constitutional Convention delegates reviewed the Local Government Article on the convention floor, they understood the authority that had been delegated to the Commission with regard to borough incorporation. For example, the following remarks were made on the floor during the review of Article X, Section 3 on January 19, 1956:

COGHILL: Further on in Section 3, I would like to ask you, Mr. Rosswog, on line 6 of page 2, "Each borough shall embrace, to the maximum extent possible, an area and population with common interests." My question here is directed to you to find out what the Committee's thinking was as to boundary areas of local government. Could you give us any light on that as to the extent? I know that you have delegated the powers to a commission, but you have said that each borough shall embrace the maximum extent possible. I am thinking now of an area that has maybe five or six economic factors in it — would they come under one borough?

Proceedings of the Alaska Constitutional Convention, p. 2620 (emphasis added).

In 1996, Victor Fischer and other constitutional experts addressed the Local Boundary Commission regarding the Local Government Article. Mr. Fischer made the following remarks with respect to the constitutional power of the Local Boundary Commission to provide for borough incorporation.

The Local Boundary Commission has total authority to establish boroughs, to change boundaries, to do essentially what it wants to do within its full authority. In addition thereto, the Commission may, subject to law, provide procedures where the locals can change boundaries, participate in the change of boundaries.

In other words, I see this first authority, as essentially unilateral, subject to legislative veto, within the 45-day provision. In addition thereto, you can -- and not the legislature -- but you can, the legislature has done it, actually you are the ones that can establish the procedures.

I see the Commission following -- sort of -- boroughs shall be established. The Commission has tremendous authority, much more than has ever

been exercised. The State has the authority to establish boroughs, to state, "you are now organized."

Transcript of Review of Local Government Article of Alaska's Constitution, Department of Community and Regional Affairs, February 13 and 14, 1996, p. 14.

It is notable, however, that the Commission has not adopted regulations expressly providing for the Commission to initiate a boundary proposal. The Commission has deliberately avoided doing so because of the quasi-judicial nature of the Commission. The Commission concluded in the course of adopting regulations in 1992 that it would be difficult for the Commission to initiate a proposal that would be subject to a later review of the Commission itself. To address that difficulty, the Commission provided in 3 AAC 110.410(a)(3), that a petition could be initiated by "the staff of the commission or a person designated by the commission, subject to (d) of this section." Subsection (d) provided as follows:

The staff of the commission or a person designated by the commission may initiate a petition if the commission

(1) determines that the action proposed will likely promote the standards established under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter; and

(2) directs the staff or designated person to prepare a petition by a motion approved by a majority of the appointed membership of the commission.

SECTION 8 – PROCEDURES THAT COULD BE USED TO CONSIDER BOROUGH INCORPORATION REQUESTED UNDER AS 44.33.812 OR INITIATED BY THE LOCAL BOUNDARY COMMISSION.

Designation of Petitioner (3 AAC 110.410).

Upon receipt of a request to consider borough incorporation under AS 44.33.812(a)(3) from the Legislature, the Commissioner of Community and Economic Development, or a political subdivision of the state; or upon a determination by the Local Boundary Commission under 3 AAC 110.410(d) that incorporation of a borough in a particular area will likely promote the standards established under the Constitution of the State of Alaska, the Commission should designate a person to prepare a petition by a motion approved by a majority of the appointed membership of the Commission.

In instances such as this where a political subdivision of an area requests incorporation of a region involving multiple communities, it is best to have a broad perspective in the creation of the petition. That can best be accomplished by an independent petitioner such as the Department, which has the expertise and resources to consider the broader interests of the region and the State than would a city or community in the affected area.

However, in order to avoid any appearance of impropriety or assertions of conflict of interest, it is imperative that the person designated to serve as petitioner be someone other than an a DCED employee currently serving as staff to the Commission. Further, if the person designated as petitioner needs legal advice from the Department of Law, the assistant attorneys general currently assigned to provide advice to the Commission or the Department should not assist the petitioner. A separate assistant attorney general should be designated by the Department of Law.

Assignments of this nature are frequently referred to as a *chinese wall*. Basically, in legal use, a *chinese wall* is an internal relationship barrier by which employees or counsel of an agency are prevented from discussing the substance of their case with other employees or their counsel who are working on the case in an opposing capacity in the same agency; e.g., for the body making a decision on the case.

Such a conflict of interest issue arose in the proceeding involving detachment of territory from the North Slope Borough in 1985. A lawsuit was filed alleging that the assistant attorney general working on the case had a conflict of interest in serving both the Department and the Commission. Designating a petitioner and counsel separate from those currently assigned to the Commission should preclude such allegations.

Preparation of Petition (3 AAC 110.420).

Requirements for a petition are set out in 3 AAC 110.420.

Technical Review of the Petition (3 AAC 110.440).

To be done by LBC staff.

Public Notice of the Filing of the Petition (3 AAC 110.450).

Extensive public notice of the petition will be given by Petitioner (publication, posting, public service announcements).

Service of the Petition (3 AAC 110.460); Proof of Notice and Service (3 AAC 110.470).

Petitioner provides evidence that the requirements for public notice and service have been satisfied.

Responsive Briefs and Written Comments (3 AAC 110.480).

Interested individuals and organizations will have the opportunity to submit written comments or responsive briefs to the LBC in answer to the petition.

Reply Brief (3 AAC 110.490).

The Petitioner will have an opportunity to file a reply brief in answer to the comments and responsive briefs filed for the petition.

Preliminary Report (3 AAC 110.530).

LBC staff will prepare a preliminary report evaluating the petition.

The preliminary report will be available for public review and comment.

Informational Sessions and Meetings (3 AAC 110.510 and 3 AAC 110.520).

LBC staff will conduct at least one public informational meeting in each proposed borough.

DCED Final Report (3 AAC 110.530).

Following consideration of comments on the preliminary report, LBC staff will prepare a final report.

Commission Public Hearing(s) (3 AAC 110.550 and 3 AAC 110.560).

The LBC will conduct at least one public hearing in each proposed borough. The hearings will be held at least three weeks following the publication of DCED's final report.

LBC Decisional Meeting (3 AAC 110.570).

The LBC will make a determination whether each proposed borough meets the standards for borough incorporation.

Opportunity to Seek Reconsideration (3 AAC 110.580).

Any individual or organization with the power to sue and be sued will have an opportunity to seek reconsideration of the LBC's decision.

Legislative Review (Alaska Constitution, Article X, Section 12).

If the LBC makes a final determination that an unorganized region meets the standards, with or without amendments and/or conditions, the LBC will submit a recommendation to the legislature under Article X, Section 12 for the incorporation of that borough. Such recommendations may be submitted to the legislature only during the first 10 days of a regular session.

If the legislature does not reject the LBC's recommendation within 45 days of the date of submission or at the end of the session, whichever came first, the recommendation would be tacitly approved.

Election (3 AAC 110.660).

The LBC would notify the Director of the Division of Elections to conduct the election of initial officials.

The Director of the Division of Elections would set a date for the election of initial officials. The date and procedures for the election would be precleared with the U.S. Justice Department under the terms of the federal Voting Rights Act.

The Division of Elections would conduct the election of initial officials. Upon certification of the results, the borough would be incorporated.

A copy of the Commission's procedural incorporation regulations is included here as Appendix J.

Appendix A

Alaska Statute Title 29 – Municipal Government Selected Provisions

Alaska Statute Title 29 - Municipal Government

Selected Provisions

Chapter 05. Incorporation.

Article

1. Requirements (§§ 29.05.031)
2. Procedure (§§ 29.05.060 - 29.05.150)

Article 1. Requirements.

Section

031. Incorporation of a borough or unified municipality

Sec. 29.05.031. Incorporation of a borough or unified municipality

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough. (§ 4 ch 74 SLA 1985; am § 7 ch 58 SLA 1994)

Cross references. – For mandatory formation of certain boroughs, see § 3, ch. 52, SLA 1963 in the Temporary and Special Acts.

Effect of amendments. — The 1994 amendment, effective August 22, 1994, in subsection (a), added “, or as a unified municipality” at the end of the introductory language and inserted “or unified municipality” in paragraphs (2) and (3).

Notes to Decisions - Consideration of non-statutory factors. — Given the Alaska Constitution’s mandate that boroughs be cohesive “to the maximum degree possible,” the Local Boundary Commission acted well within the purview of its authority in considering the desirability of future incorporation of neighboring areas such as Prince William Sound and the interests of affected land owners and users such as the Chugach Alaska Corporation. *Petitioners for Incorporation of City & Borough v. Local Boundary Comm’n, Sup. Ct. Op. No. 4192 File no. S-5760, P.2d (1995).*

Proposed area was not cohesive enough for organized borough government. — See *Valleys Borough Support Comm. v. Local Boundary Comm’n, 863 P.2d 232 (Alaska 1993).*

As to de facto incorporation, see *Jefferson v. State*, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (Alaska 1974), decided under former, similar law.

Legislation to organize a specific borough unconstitutional. — Chapter 145, SLA 1974, by which the Eagle River-Chugiak Borough was organized, contravened the provisions of Alaska Const., art. II, § 19, since it was special and local legislation creating a new local government without regard to the general statutory provisions that prescribe the method that otherwise governs the creation of new local governmental entities from existing ones. *Abrams v. State*, Sup. Ct. Op. No. 1142 (File No. 2407), 534 P.2d 91 (Alaska 1975), decided under former, similar law.

Proposed area was not cohesive enough for organized borough government. — See *Valleys Borough Support Comm. v. Local Boundary Comm'n*, 863 P.2d 232 (Alaska 1993).

Applied in *Lake & Peninsula Borough v. Local Boundary Comm'n*, 885 P.2d 1059 (Alaska 1994).

Stated in *United States v. Pleier*, 849 F. Supp. 1321 (D. Alaska 1994).

Article 2. Procedure

Section

060.	Petition	120.	Election of initial officials
070.	Review		
080.	Investigation	130.	Integration of special districts and service areas
090.	Hearing		
100.	Decision	140.	Transition
110.	Incorporation election	150.	Challenge of legality

Sec. 29.05.060. Petition

Municipal incorporation is proposed by filing a petition with the department. The petition must include the following information about the proposed municipality:

- (1) class;
- (2) name;
- (3) boundaries;
- (4) maps, documents, and other information required by the department;
- (5) composition and apportionment of the governing body;
- (6) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation;
- (7) for a borough or unified municipality, based on the number who voted in the respective areas in the last general election, the signature and resident address of 15 percent of the voters in
 - (A) home rule and first class cities in the area of the proposed borough or unified municipality; and
 - (B) the area of the proposed borough or unified municipality outside home rule and first class cities;
- (8) for a first class borough or unified municipality, a designation of areawide powers to be exercised;
- (9) for a second class borough, a designation of areawide and nonareawide powers to be exercised;
- (10) for a first class, second class, or home rule city, a designation of the powers to be exercised;

(11) for a first class or home rule city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 50 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;

(12) for a second class city, based on the number who voted in the area in the last general election, the signatures and resident addresses of 25 voters in the proposed city or of 15 percent of the voters in the proposed city, whichever is greater;

(13) for a home rule city, home rule borough, or unified municipality a proposed home rule charter. (§ 4 ch 74 SLA 1985; am § 8 ch 58 SLA 1994)

Effect of amendments. — The 1994 amendment, effective August 22, 1994, substituted “must” for “shall” in the second sentence of the introductory language, inserted “or unified municipality” in three places in paragraph (7) and in one place in paragraphs (8) and (13), substituted “first class, second class, or home rule city” for “first or second class city” in paragraph (10), inserted “or home rule” in paragraph (11), and inserted “city, home rule” in paragraph (13).

Sec. 29.05.070. Review

The department shall review an incorporation petition for content and signatures and shall return a deficient petition for correction and completion. (§ 4 ch 74 SLA 1985)

Sec. 29.05.080. Investigation

(a) If an incorporation petition contains the required information and signatures, the department shall investigate the proposal and shall hold at least one public informational meeting in the area proposed for incorporation. The department shall publish notice of the meeting.

(b) The department may combine incorporation petitions from the same general area.

(c) The department shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation. (§ 4 ch 74 SLA 1985)

Sec. 29.05.090. Hearing

The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal. (§ 4 ch 74 SLA 1985)

Sec. 29.05.100. Decision

(a) The Local Boundary Commission may amend the petition and may impose conditions on the incorporation. If the commission determines that the incorporation, as amended or conditioned if appropriate, meets applicable standards under the state constitution and commission regulations, meets the standards for incorporation under AS 29.05.011 or 29.05.031, and is in the best interests of the state, it may accept the petition. Otherwise it shall reject the petition.

(b) A Local Boundary Commission decision under this section may be appealed under AS 44.62 (Administrative Procedure Act). (§ 4 ch 74 SLA 1985; am § 9 ch 58 SLA 1994; am § 2 ch 86 SLA 1999)

Effect of amendments. — the 1999 amendment, effective September 28, 1999, rewrote subsection (a).

The 1994 amendment, effective August 22, 1994, in subsection (a), substituted “may accept” for “Shall accept” and inserted “or amend” in the second sentence, deleted “If the commission determines that the proposed municipal boundaries can be altered to meet the standards, it may alter the

boundaries” preceding “and accept the petition” in the former third sentence, and made a related stylistic change.

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 28 et seq.

62 C. J. S., Municipal Corporations, § 6 et seq.

Notes to Decisions - Power to redraw petition boundaries. — By requiring that each borough “embrace an area and population with common interests to the maximum extent possible,” Alaska Const. art. X, § 3 necessarily vests the Local Boundary Commission with power to find non-compliance when the boundaries originally described in a petition for incorporation do not maximize common interests. Thus, although subsection (a) requires a preliminary finding of non-compliance before the boundaries of a proposed borough may be altered, the Local Boundary Commission, in passing on the issue of compliance, has broad authority to decide what the most appropriate boundaries of the proposed borough would be. *Petitioners for Incorporation of City & Borough v. Local Boundary Comm’n*, Sup. Ct. Op. No. 4192 File No. S-5760, P.2d (1995) (decided prior to 1994 amendment).

Implied finding of non-compliance. — A finding of non-compliance under subsection (a) may be made either expressly or by implication. *Petitioners for Incorporation of City & Borough v. Local Boundary Comm’n*, Sup. Ct. Op. No. 4192 File No. S-5760, P.2d (1995).

Because the Local Boundary Commission based its decision that the 141st Meridian was the most appropriate boundary for the proposed borough on criteria reflecting the common interests on the area and its population, and because the Local Boundary Commission plainly meant its decision to ensure that the area and population to be included in the approved borough would be maximally cohesive, the decision itself was tantamount to a declaration that the originally proposed boundaries did not comply with the standards for incorporation. *Petitioners for Incorporation of City & Borough v. Local Boundary Comm’n*, Sup. Ct. Op. No. 4192 File No. S-5760, P.2d (1995).

Consideration of non-statutory factors. — Given the Alaska Constitution’s mandate that boroughs be cohesive “to the maximum degree possible,” the Local Boundary Commission acted well within the purview of its authority in considering the desirability of future incorporation of neighboring areas such as Prince William Sound and the interests of affected land owners and users such as the Chugach Alaska Corporation. *Petitioners for Incorporation of City & Borough v. Local Boundary Comm’n*, Sup. Ct. Op. No. 4192 File No. S-5760, P.2d (1995).

Action not subject to defense of laches. — Action by villages in superior court for declaratory and injunctive relief objecting to the incorporation of a borough was timely filed; the action proceeded at law and the equitable defense of laches was inapplicable. *Lake & Peninsula Borough v. Local Boundary Comm’n*, 885 P.2d 1059 (Alaska 1994).

Sec. 29.05.110. Incorporation election

(a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of an incorporation petition. Within 30 days after notification, the director of elections shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial municipal officials. If incorporation is rejected, no officials are elected. The election shall be held not less than 30 or more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officials may be filed.

(b) A voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in an incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each nonareawide power to be exercised is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing in the proposed borough but outside all cities in the proposed borough.

(d) A home rule charter included in an incorporation petition under AS 29.05.060(13) is considered to be part of the incorporation question. The home rule charter is adopted if the voters approve incorporation of the city, borough, or unified municipality.

(e) The director of elections shall supervise the election in the general manner prescribed by the AS 15 (Election Code). The state shall pay all election costs under this section. (§ 4 ch 74 SLA 1985; am § 10 ch 58 SLA 1994)

Effect of Amendments. — The 1994 amendment, effective August 22, 1994, substituted “the city, borough, or unified municipality” for “the borough” in the second sentence in subsection (d).

Collateral references. — 25 Am. Jur. 2d, Elections, § 1 et seq.
63 C. J. S., Municipal Corporations, § 1032.

Sec. 29.05.120. Election of initial officials

(a) Nominations for initial municipal officials are made by petition. The petition shall be in the form prescribed by the director of elections and must include the name and address of the nominee and a statement of the nominee that the nominee is qualified under the provisions of this title for the office that is sought. A person may file for and occupy more than one office, but may not serve simultaneously as

(1) borough mayor and as a member of the assembly; or

(2) city mayor and as a member of the council in a first class city.

(b) Except for a proposed second class city, petitions to nominate initial officials must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officials are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) Petitions to nominate initial officials of a second class city must include the signature and resident address of 10 voters in the area of the proposed city.

(d) The director of elections shall supervise the election in the general manner prescribed by the AS 15 (Election Code). The state shall pay all election costs.

(e) The initial elected officials take office on the first Monday following certification of their election.

(f) The initial elected members of the governing body shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected. (§ 4 ch 74 SLA 1985)

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 140 et seq.
62 C. J. S., Municipal Corporations, §§ 152-155.

Sec. 29.05.130. Integration of special districts and service areas

(a) A service area in a newly incorporated municipality shall be integrated into the municipality within two years after the date of incorporation. On integration the municipality succeeds to all the rights, powers, duties, assets, and liabilities of the service area. On integration all property in the service area subject to taxation to pay the principal and interest on bonds at the time of integration remains subject to taxation for that purpose.

(b) After integration, the municipality may exercise in a former service area all of the rights and powers exercised by the service area at the time of integration, and, as successor to the service area, may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a municipality in which the service area was formerly located. (§ 4 ch 74 SLA 1985)

Cross References. — For constitutional provision as to integrating existing special service districts into new boroughs, see Alaska Const., art. X, § 15.

Opinions of Attorney General. — When boroughs assumed powers previously exercised by service areas, public utility districts, and school districts, they were required to assume the following duties: contractual obligations, and liability on bonded and other indebtedness under a former, similar provision. 1963 Op. Att'y Gen. No. 29.

Sec. 29.05.140. Transition

(a) The powers and duties exercised by cities and service areas that are succeeded to by a newly incorporated municipality continue to be exercised by the cities and service areas until the new municipality assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new municipality.

(b) Before the assumption, the new municipality shall give written notice of its assumption of the rights, powers, duties, assets, and liabilities under this section and AS 29.05.130 to the city or service area concerned. Municipal officials shall consult with the officials of the city or service area concerned and arrange an orderly transfer.

(c) After the incorporation of a new municipality, a service area in it may not assume new bonded indebtedness, make a contract, or transfer an asset without the consent of the governing body.

(d) Upon incorporation, the home rule charter of a unified municipality operates to dissolve all municipalities in the area unified in accordance with the charter.

(e) This section applies to home rule and general law municipalities. (§ 4 ch 74 SLA 1985; am § 11 ch 58 SLA 1994)

Revisor's notes. — Subsection (d) was enacted as (e). Relettered in 1994, at which time former (d) was relettered as (e).

Effect of amendments. — The 1994 amendment, effective August 22, 1994, added present subsection (d).

Opinions of Attorney General. — Under a former, similar provision, city ordinances affecting public health remained in effect for a period not to exceed two years from the date of the borough's incorporation or until superseded by ordinances passed by the borough, and it was superfluous to include this in the incorporation petition. 1962 Op. Att'y Gen. No. 9.

A teacher who had served a two-year probationary period in a rural or district school, and who obtained tenure in that school, retained his tenure status when the school became part of an organized borough under a former, similar provision. 1963 Op. Att'y Gen. No. 11.

A former, similar provision provided for a two-year transition period during which the organized borough had to assume the powers of any school district within its boundaries. The statute did not make this transition period applicable to state-operated schools, since such schools existed only outside of city school districts, incorporated school districts, and independent school districts. 1963 Op. Att'y Gen. No. 23.

Under a former, similar provision, a newly incorporated borough assumed administrative responsibility for a state-operated school within its boundaries immediately after incorporation. 1963 Op. Att'y Gen. No. 23.

A former, similar provision provided that an organized borough would provide, establish, maintain, and operate the schools within its boundaries. Ownership of state-operated schools had to be conveyed by the state to the local school district as soon as possible after incorporation. The transfer of direct administration of these schools should have been made shortly after incorporation, prior to the beginning of the next fiscal year, and as quickly as was consistent with continuity of operation and efficient management. 1963 Op. Att'y Gen. No. 23.

The clear meaning of a former, similar provision was that after the incorporation of an organized borough and until the powers exercised by service areas and special districts were assumed by the borough, service areas and special districts could not assume new bonded indebtedness, make any contract, or transfer any asset without first receiving the consent of the borough assembly. There was no limitation on the type of contract into which the service area or special district might enter except that the approval of the borough assembly first be obtained. 1963 Op. Att'y Gen. No. 29.

A former, similar provision provided a safeguard for the boroughs to assure that special service districts, public utility districts and school districts did not incur financial obligations which were not in the best interest of the borough during the transition period between the organization of the borough and date at which the powers presently exercised by the service areas and service districts were assumed by the borough. 1963 Op. Att'y Gen. No. 29.

Under a former, similar provision, when boroughs assumed powers previously exercised by service areas, public utility districts, and school districts, they were required to assume the following duties: contractual obligations, and liability on bonded and other indebtedness. 1963 Op. Att'y Gen. No. 29.

A borough had to repay a city for advances made from city general fund to pay debts incurred in behalf of the city school district under a former, similar provision. 1965 Op. Att'y Gen. No. 1.

If a borough failed to pay city school district obligations, as required by a former, similar provision, the city or other creditors might enforce payment. 1965 Op. Att'y Gen. No. 1.

Though a borough was liable to pay the city school district's obligations under a former, similar provision, the Department of Education had no authority to require that the borough place a share of state support money into special accounts to be used only for this purpose. 1965 Op. Att'y Gen. No. 1.

Sec. 29.05.150. Challenge of legality

A person may not challenge the formation of a municipality except within six months after the date of its incorporation. (§ 4 ch 74 SLA 1985)

Notes to Decisions - Laches. — Action by villages in superior court for declaratory and injunctive relief objecting to the incorporation of a borough was timely filed; the action proceeded at law and the equitable defense of laches was inapplicable. *Lake & Peninsula Borough v. Local Boundary Comm'n*, 885 P.2d 1059 (Alaska 1994).

Laches. — In a contest over the validity of a unit of municipal government, laches can be raised as a defense to such a claim. *Concerned Citizens v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1093 (File No. 2239), 527 P.2d 447 (Alaska 1974), decided under former, similar law.

Collateral references. — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 28-38.

62 C. J. S., Municipal Corporations, §§ 8, 36.

Estoppel as to validity of organization of municipality by recitals in bonds. 86 ALR 1088; 158 ALR 938.

Injunction to restrain enforcement of municipal tax upon ground involving attack upon legal existence of municipality. 129 ALR 257.

Power of district or prosecuting attorney to bring action of quo warranto attacking existence of municipal corporation. 131 ALR 1219.

Organization thought to be incorporated under unconstitutional statute as a de facto corporation. 136 ALR 193.

Capacity to attack the fixing or extension of municipal limits or boundary. 13 ALR2d 1279. t occupies the area formerly occupied by a borough” at the end of subsection (c).

Appendix B

1963 Mandatory Borough Act (ch. 52, SLA 1663)

SLA 1963

CHAPTER 52

AN ACT RELATING TO THE INCORPORATION OF ORGANIZED BOROUGHES AND PROVIDING FOR CERTAIN GRANTS TO BOROUGHES.

(C.S.H.B. 90)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Declaration of Intent. It is the intention of the legislature to provide for maximum local self-government with a minimum number of local government units and tax-levying jurisdictions, and to provide for the orderly transition of special service districts into constitutional forms of government. The incorporation of organized boroughs by this Act does not necessarily relieve the state of present service burdens. No area incorporated as an organized borough shall be deprived of state services, revenues, or assistance or be otherwise penalized because of incorporation. With the exception of planning and zoning, education, and tax collection and assessment, all powers granted the first-class boroughs are exercised at the option of the borough assemblies.

Sec. 2. First- and Second-Class Borough Incorporation. In addition to the incorporation of organized boroughs by local option, first- and second-class organized boroughs are incorporated as provided by this Act.

Sec. 3. Areas Incorporated. (a) If an organized borough is not incorporated by local option as provided by AS 07.10.010 within areas designated in this section, each area designated becomes, on January 1, 1964, a first- or second-class organized borough as determined by local election and a municipal corporation, and possesses all the powers and privileges prescribed by AS 07. Areas designated are:

- (1) Sitka Election District #3
- (2) Juneau Election District #4
- (3) Palmer-Wasilla-Talkeetna Election District #7
- (4) Anchorage Election District #8
- (5) Combined Seward Election District #9 and Kenai-Cook Inlet Election District #10
- (6) Kodiak Election District #11
- (7) Ketchikan Election District #2 as designated in Sec. 3, Art. XIV, of the State

Constitution, except the Annette Island Indian Reservation created by Act of Congress dated March 3, 1961, 26 Stat. 1101.

(8) Fairbanks Election District #19 as designated in Sec. 3, Art. XIV, of the State Constitution.

(b) If a portion of any district designated above is incorporated by local option before October 1, 1963, and the remaining portion of the district meets the standards for incorporation as provided in AS 07.10.030, the Local Affairs Agency shall make a finding to that effect and notify the secretary of state to hold elections in the area. The area is incorporated as an organized borough on January 1, 1964.

(c) The borough assembly may select the borough seat and borough name in the boroughs designated by this section.

(d) So long as the following areas remain military reservations, they shall be excluded from any borough incorporated in accordance with this section; provided, however, that when an area shall no longer be subject to a military reservation, it shall become a part of the borough surrounding it. Areas excluded at this time are:

- (1) Kodiak Naval Station (base proper)
- (2) Ft. Richardson Army Base (base proper)
- (3) Elmendorf Air Force Base (base proper)
- (4) Ft. Wainwright Army Base (base proper)
- (5) Eielson Air Force Base (base proper)
- (6) Ft. Greely Army Base (base proper)
- (7) Wildwood Station (base proper)

Sec. 4. **Election.** (a) On October 1, 1963, the Local Affairs Agency shall direct the secretary of state to hold elections for all borough officers and for determination of whether the borough shall be first-class or second-class in the boroughs incorporated by sec. 3 of this Act.

(b) Upon receipt of the notification, the secretary of state shall hold elections before December 15, 1963, for all borough officers as prescribed by AS 07.10.120.

Sec. 5. AS 07.05.030 is repealed and reenacted to read:

Sec. 07.05.030. **Transition of Special Service Districts.** Special service districts located in existing election districts Nos. 3, 4, 7, 8, 9, 10, and 11, and in districts Nos. 2 and 19 as designated in the State Constitution continue to exercise their powers and functions in accordance with AS 07.10.130 and 140. Other special districts continue to exercise their powers and functions under existing law until July 1, 1964.

Sec. 6. AS 07.10.010 is amended to read:

Sec. 07.10.010. **Incorporation Proposed by Petition.** The incorporation of a first- or second-class organized borough by local option is proposed by filing a petition with the Local Affairs Agency.

Sec. 7. AS 07.10 is amended by adding a new section to read:

Sec. 07.10.125. **Boundary Adjustments.** (a) The Local Boundary Commission may hold public hearings in each area incorporated as an organized borough to determine the necessity for boundary adjustments.

(b) Boundary adjustments may include expanding the boundaries, contracting the boundaries, dividing the areas into two or more areas, or combining two or more areas.

(c) Boundary adjustments made by the Local Boundary Commission shall be submitted to the legislature during the first 10 days of a regular session. The boundary adjustments shall become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

Sec. 8. AS 07.10 is amended by adding new sections to read:

Article 2

Transitional Assistance

Sec. 07.10.150. **State Lands.** An organized borough may select 10 per cent of the vacant, unappropriated, unreserved state lands located within its boundaries within five years after the date of availability of state lands in the borough. Nothing in this section affects any valid existing claim, location, or entry under the laws of the state or the United States, whether for homestead, mineral, right-of-way, or other purpose, or affects the rights of any owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

Sec. 07.10.160. **Selection Procedure.** (a) All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. The authority to make selections may not be alienated or bargained away, in whole or in part, by the borough.

(b) If lands desired by the borough are unsurveyed at the time of their selection, the Department of Natural Resources shall survey the exterior boundaries of the area requested without any interior subdivision, and shall issue a patent for the selected area in terms of the exterior boundary survey. The cost of survey is borne by the borough. If lands desired by the borough have been surveyed at the time of their selection, the boundaries of the area requested shall conform to the public land subdivisions established by the approval of the survey. Lands selected by the borough in accordance with this chapter shall be patented to the borough by the Department of Natural Resources.

(c) After the selection of the lands by the borough but before the issuance of final patent, the borough may execute conditional leases and make conditional sales of selected lands.

Sec. 07.10.170. **Organizational Grants.** (a) For the purpose of defraying the cost of transition to borough government and in order to provide for development and interim governmental operations, each organized borough is entitled to an organizational grant equal to \$10 for every qualified voter within the borough who voted in the last general election. However, each borough is entitled to at least \$25,000.

(b) The Local Affairs Agency shall determine, within 60 days after the date of incorporation of an organized borough, the number of qualified voters in the borough who voted in the last election.

(c) Within 30 days after the completion of its findings, the Local Affairs Agency shall transmit to each organized borough from money appropriated to it the total amount of money to which the borough is entitled.

Approved April 12, 1963

Appendix C

Walters v. Cease



**Benjamin O. WALTERS and Frank Mullen,
Petitioners,**

v.

Ronald CEASE, Director, Local Affairs Agency, Hugh J. Wade, Secretary of State, John Gill and L. H. Norene, Respondents.

No. 518.

Supreme Court of Alaska.

Aug. 7, 1964.

Suit was brought to enjoin the Secretary of State from referring act for approval or rejection by the people at a statewide election. The Superior Court, Third Judicial District, Ralph E. Moody, J., entered a judgment granting an injunction, and a petition was filed for review. The Supreme Court, Dimond, J., held that the act incorporating eight specifically designated and defined areas of the State as organized boroughs was "local legislation" and "special legislation" within provision

2. Picetti v. Orcio, 57 Nev. 52, 65, 67 P.2d 315 (1937).

of Constitution that referendum shall not be applied to "local or special legislation".

Judgment affirmed.

See also Alaska, 388 P.2d 263.

Statutes \S 343

Act incorporating eight specifically designated and defined areas of State as organized boroughs was "local legislation" and "special legislation" within provision of Constitution that referendum shall not be applied to "local or special legislation." Laws 1963, c. 52, $\S\S$ 1 et seq., 3; AS 07-05.010-07.40.010; Const. art. 10, $\S\S$ 2, 3, 12, 14; art. 11, $\S\S$ 1, 7; art. 13, \S 1 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

Theodore Stevens, Anchorage, for petitioner.

Theodore M. Pease, Jr., Burr, Boney & Pease, Anchorage, for respondents John Gill and L. H. Norene.

Warren C. Colver, Atty. Gen., and John K. Brubaker, Asst. Atty. Gen., for respondents Ronald Cease and Hugh J. Wade.

Before NESBETT, C. J., and DIMOND and AREND, JJ.

DIMOND, Justice.

The court below enjoined the Secretary of State from referring chapter 52 SLA 1963 for approval or rejection by the people at a statewide election.¹ The constitution provides that the people may approve or reject acts of the legislature by the referendum, but that the referendum shall not be applied to local or special legislation.² We hold that Chapter 52 is "local or special legislation" within the meaning of the constitution, that it is not subject to the referendum, and that the lower court's injunction was properly issued.

The part of the constitution dealing with local government provides that all local government powers shall be vested in boroughs and cities.³ It also provides that the entire state shall be divided into boroughs.⁴ A means of accomplishing the constitutional objective was furnished by the legislature in a statute enacted in 1961.⁵ Under that law the incorporation of an organized borough is initiated by filing a petition with the Local Affairs Agency, an agency required by the constitution to be established by law in the executive branch of the state government to advise and assist local governments.⁶ The Local Affairs Agency has the duty of determining whether the proposed borough meets certain

1. The lower court enjoined submission of the referendum on the ground that chapter 52 carried out a constitutional mandate relating to the establishment of boroughs, that to permit a referendum petition to be voted upon might effect the repeal of a law carrying out a constitutional mandate, and that this in turn would be to permit the people of the state to thwart the constitutional mandate establishing boroughs without calling for a constitutional amendment as required by article XIII of the constitution. This is a question that we do not pass upon in this case.

2. Alaska Const. art. XI, $\S\S$ 1, 7.

3. Alaska Const. art. X, \S 2 provides: "All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only."

Alaska Rep. 389-396 P.2d-13

4. Alaska Const. art. X, \S 3 provides:

"The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law."

5. AS 07.05.010-07.40.010.

6. Alaska Const. art. X, \S 14 provides: "An agency shall be established by law

standards for incorporation which are set forth in the statute and which relate to such factors as population, geography, economy and transportation. The matter is then referred to the Local Boundary Commission which, like the Local Affairs Agency, is also required by the constitution to be established by law in the executive branch of the state government.⁷ The Commission holds public hearings and then determines whether the petition for incorporation is to be accepted. If it is accepted, an election is held within the area involved to determine whether it shall become an incorporated borough.

An additional means for accomplishing the constitutional objective of establishing borough government was provided by chapter 52 SLA 1963. Here the legislature did not leave the question of the formation of boroughs to local option, as it did in the 1961 statute. Instead, in chapter 52 the legislature itself incorporated eight specifically designated and defined areas of the state as organized boroughs effective January 1, 1964, provided that they had not before that date become incorporated by local option under the 1961 law.⁸

Chapter 52 is not a general act. It selected only a certain few communities which presumably met the standards for incorporation as organized boroughs and declared that they were to become incorporat-

ed. It made no mention of the rest of the state. There may have been other communities that also could have met the standards. We do not know, because the legislature did not say whether the communities selected were the only ones qualified to become boroughs.

Even if it were assumed that the eight areas chosen by the legislature were the only areas qualified for borough government in 1963, this would not mean that chapter 52 was general legislation. Other areas of the state conceivably could meet the statutory requirements in subsequent years. As to them, incorporation as organized boroughs would not take place under the mandatory requirements of chapter 52, but rather under the local option provisions of the general law enacted in 1961.

Chapter 52 is both local and special legislation within the meaning of article XI, section 7 of the constitution.⁹ It is local because it applies only to a limited number of geographical areas, rather than being widespread in its operation throughout the state. It is special because its method for incorporating organized boroughs is peculiar to the few selected localities where it is applicable. Being local and special legislation, chapter 52 SLA 1963 is not subject to the referendum.

Judgment affirmed.

in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

7. Alaska Const. art. X, § 12 provides:

"A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at

the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action."

8. SLA 1963, ch. 52, § 3.

9. Alaska Const. art. XI, § 7 provides in relevant part:

"The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety."

Appendix D

Chapter 145, SLA 1974 Special and Temporary Acts

CHAPTER 145

AN ACT RELATING TO MUNICIPAL INCORPORATION AND DISSOLUTION;
AND PROVIDING FOR AN EFFECTIVE DATE.

(CSHB 853 am S)

Be it enacted by the Legislature of the State of Alaska:

Section 1. LEGISLATIVE FINDING. The legislature finds that the incorporation of an organized borough provided for in secs. 1 – 9 of this Act accords with standards governing borough incorporation under art. X, sec. 3 of the state constitution and that this Act further conforms to the requirements of art. II, sec. 19 of the state constitution governing local acts.

Sec. 2. INCORPORATION. (a) At the first statewide election occurring after May 26, 1974, the lieutenant governor shall hold a special election within the area designated in sec. 3 of this Act at which the qualified voters of the area vote upon the following proposition:

“Shall the Eagle River-Chugiak area be incorporated as a second class organized borough? Yes [] No []”

(b) If the question receives the affirmative vote of a majority of qualified voters voting on the question, the area designated in sec. 3 of this Act, on the date of certification of election results by the lieutenant governor, is incorporated as an organized borough of the second class having all the applicable rights, powers, privileges and duties provided under AS 29, and otherwise by the general laws of the state and this Act, including but not limited to entitlement from the date of incorporation to transitional assistance and state revenue sharing in accordance with this Act, AS 29.18.180 – 29.18.200 and AS 43.18.

(c) If the question voted on at the election provided for in (a) of this section fails to receive the affirmative vote of a majority of the qualified voters voting on the question, at the following statewide election the lieutenant governor shall hold a special election within the area designated in sec. 3 of this Act at which the qualified voters of the area vote upon the following proposition:

“Shall the Eagle River-Chugiak area be incorporated as a second class city? Yes [] No []”

(d) If the question receives the affirmative vote of a majority of the qualified voters voting on the question, the area designated in sec. 3 of this Act is incorporated as a second class city having all the applicable rights, powers, privileges and duties conferred under AS 29, and otherwise by the general laws of the state, for a second class city, including but not

limited to entitlement from the date of incorporation to transitional assistance and state revenue sharing as provided under AS 29.18.180 – 29.18.200 and AS 43.18.

(e) Before the election provided for in (a) or (c) of this section, and upon due notice, the local boundary commission shall hold at least one public hearing for informational purposes in the area proposed to be incorporated. It may make studies relating to the incorporation it considers appropriate.

(f) The lieutenant governor shall provide for and supervise the elections provided for in this section in the general manner prescribed by the Alaska Election Code (AS 15.05 – 15.60). The state shall pay all election costs under this section.

Sec. 3. BOUNDARIES. The boundaries of the area designated for incorporation under the provisions of sec. 2 of this Act are as follows: All that land included on the effective date of this Act in the Greater Anchorage Area Borough and lying northerly of the following line: commencing in Knik Arm on the west boundary of the Greater Anchorage Area Borough and on the south boundary of section 17, T14N, R3W, SM; thence east along the south boundary of sections 17, 16, 15, 14 and 13, T14N, R3W, SM; thence east along the south boundary of sections 18, 17, and 16, T14N, R2W, SM; thence south between sections 21 and 22, thence east along the south boundary of sections 22, 23, and 24, T14N, R2W, SM; thence southeasterly to the southwest protracted corner of section 1, T12N, R1W, SM; thence southeasterly to the southwest protracted corner of section 34, T12N, R2E, SM; thence east along the south boundaries of townships 12N, ranges 2E, 3E, 4E and 5E to the east boundary of the Greater Anchorage Area Borough.

Sec. 4. BOUNDARY ADJUSTMENTS. Within six months of incorporation of the municipality as provided in sec. 2 of this Act, the local boundary commission shall hold public hearings within the area incorporated to determine the necessity for boundary adjustments and shall submit its recommendations if any to the legislature in the manner required by law.

Sec. 5. EFFECT OF ACT. Incorporation of an organized borough of the second class under secs. 1 – 9 of this Act divides the area designated in sec. 3 of this Act from the Greater Anchorage Area Borough. Incorporation of a second class city under secs. 1 – 9 of this Act constitutes the city as a second class city within the Greater Anchorage Area Borough.

Sec. 6. INITIAL ELECTION OF OFFICERS. (a) If incorporation of an organized borough or city takes effect as provided in secs. 1 – 9 of this Act, the lieutenant governor shall provide for the first election of officers of the municipal governing body, in substantial compliance with the provisions of AS 29.18.120 in this section. Members of the initial

municipal governing body are elected and serve terms in accordance with AS 29.18.120 and this section.

(b) The initial assembly of a borough incorporated as provided in this Act shall be comprised of seven members who shall be elected according to an apportionment consistent with the equal representation standards of the Constitution of the United States and set by the local boundary commission after due notice and hearing in the area incorporated. Assembly composition and apportionment as established in this section may be changed, and shall otherwise be governed, as provided in AS 29.23.020.

(c) If incorporation under secs. 1 – 9 of this Act is as a borough, at the election called to choose the initial assembly under (a) of this section the school board of the borough shall also be elected. The board shall be comprised of five members elected for terms as provided in AS 14.12.050, except that the terms of the initial school board members shall be measured for the purpose of compliance with AS 14.12.050 as if election were on the date one year preceding the next regular borough election date, as set by law or otherwise designated by the assembly, preceding the election of the board. School board composition under this section may be changed as provided by AS 14.12.050.

Sec. 7. NAME AND GOVERNING SEAT OF MUNICIPALITY. The initial municipal governing body of the municipality incorporated as provided in this Act shall select the name and governing seat of the municipality.

Sec. 8. BOROUGH POWERS. In addition to exercising the areawide powers required to be exercised within the borough by law, the second class organized borough incorporated under provisions of this Act shall have and may exercise areawide or otherwise the powers necessary to provide the following facilities and services within the borough, other provisions of law governing acquisition of borough powers notwithstanding: health services, sewers, dog control, transportation systems, libraries, and other powers and functions being exercised on the effective date of this Act by the Greater Anchorage Area Borough within the area incorporated under provisions of this Act, whether exercise by the Greater Anchorage Area Borough is on an areawide basis or otherwise. Other powers and functions may be acquired and exercised by the borough incorporated under provisions of this Act as provided by law.

Sec. 9. SUCCESSION AND TRANSITION. (a) Upon incorporation of a municipality under provisions of this Act, the municipality incorporated succeeds to the rights, powers, privileges, duties and functions which are by law applicable to it as a municipality and which are being exercised by the Greater Anchorage Area Borough on May 26, 1974 within the area incorporated. The municipality succeeds also to the assets and liabilities of the Greater Anchorage Area Borough,

whether real or intangible, and including but not limited to bonded or other indebtedness, respecting the area incorporated as to a power or function succeeded to by the municipality, upon final determination of allocation of assets and liabilities between the Greater Anchorage Area Borough and the municipality incorporated as provided in (b) of this section.

(b) Upon incorporation of a borough or city as provided in this Act, the local boundary commission, after due notice and hearing to parties concerned, shall prepare an order providing for an equitable allocation between the Greater Anchorage Area Borough and the municipality incorporated of assets and liabilities, whether real or intangible, and including but not limited to bonded or other indebtedness, respecting the area incorporated as to a power or function succeeded to by the municipality. The commission decision may be appealed under the Administrative Procedure Act (AS 44.62). A final determination under this section is binding on the municipalities. Not less than all property within the area incorporated under provisions of this Act remains subject to taxation to amortize bonded or other indebtedness affecting the area incorporated and existing at the time of incorporation. The assembly of a borough incorporated under provisions of this Act is authorized to levy and collect special charges, taxes, or assessments to amortize the indebtedness.

(c) The provisions of this Act or other law notwithstanding, a power or function which is being exercised on May 26, 1974 by the Greater Anchorage Area Borough within an area incorporated under this Act and which is succeeded to by the borough or city incorporated shall continue to be exercised by the Greater Anchorage Area Borough until the borough or city incorporated under this Act assumes the power or function, which shall not be later than the close of the fiscal year of the Greater Anchorage Area Borough during which incorporation occurs. However, in the case of incorporation of a borough under provisions of this Act, the Greater Anchorage Area Borough shall continue to assess and collect borough taxes levied within the municipality for the borough fiscal year in which incorporation occurs until the close of that year, and thereafter as necessary to enforce collection of the taxes, and shall also collect, or receive, other revenues pertaining to the area incorporated for that fiscal year; taxes and other revenues collected or received shall be remitted as promptly as possible, consistent with this subsection, to the new municipality on a basis fairly reflecting the division of powers and functions during transition between the Greater Anchorage Area Borough and the municipality. The local boundary commission shall by order determine the allocation of tax and other revenues under this subsection. The commission decision may be appealed under the Administrative Procedure Act (AS 44.62). A final determination under this subsection is binding on the municipalities.

(d) Ordinances, rules, resolutions, procedures and orders in effect before the transfer of powers and functions under this section remain in effect until superseded by action of the governing body of the new municipality. The provisions of this Act or other law notwithstanding, Greater Anchorage Area Borough assembly or school board members who are residents of the area which is incorporated as a borough under provisions of this Act continue to serve in office until completion of the transition under (c) of this section, and thereafter their seats on the assembly or school board shall be filled as otherwise provided by law for the filling of a vacancy.

(e) Written notice of intention to assume powers and functions by the new municipality under this section shall be given the Greater Anchorage Area Borough, and officials of the respective municipalities shall arrange for an orderly transfer.

(f) After incorporation of a municipality under provisions of this Act, the Greater Anchorage Area Borough may not authorize new bonded indebtedness or transfer assets with respect to the area incorporated without consent of the governing body of the new municipality.

(g) Applications, petitions, hearings, litigation, and other official proceedings relating to an area incorporated under provisions of this Act and not completed at the time of incorporation continue in effect and may be continued and completed as appropriate under this Act before or in the name of the new municipality.

(h) Records, ledgers, files, documents, and other papers held by the Greater Anchorage Area Borough and pertaining to the area incorporated under provisions of this Act shall upon request of the governing body of the municipality incorporated be transferred or otherwise furnished the new municipality. Officials of the Greater Anchorage Borough shall assist the officials of the new municipality in collecting and reviewing information to be transferred or otherwise furnished under this section.

Sec. 10. DISSOLUTION OF LOST RIVER. The development city of Lost River, as provided in ch. 110, SLA 1972, is dissolved.

Sec. 11. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Permitted to become law
without signature
Effected May 26, 1974

Appendix E

Abrams v. State

Harold S. ABRAMS et al., Appellants,

v.

STATE of Alaska et al., Appellees,

v.

**Lee B. JORDAN, Mayor of the Second Class
Borough in the Eagle River-Chugiak
Area, et al., Appellees.**

**Lee B. JORDAN, Mayor of the Second Class
Borough in the Eagle River-Chugiak
Area, et al., Cross-Appellants,**

v.

**Harold S. ABRAMS et al., Cross-Appellees.
Nos. 2407, 2418.**

Supreme Court of Alaska.

April 15, 1975.

Action was instituted to determine validity of formation of the Eagle River-Chugiak Borough. The Superior Court, Third Judicial District, Anchorage District, Eben H. Lewis, J., upheld validity of the borough and appeal was taken. The Supreme Court, Connor, J., held that statute pertaining to the organization of the Eagle River-Chugiak Borough was special and local in nature; that nothing in nature of the Eagle River-Chugiak area justified departure from general law scheme of incorporating new boroughs and, therefore, the statute pertaining to creation of the borough contravened constitutional prohibition against passage of local or special acts when a general act can be made applicable; and that constitutional provision requiring division of state into boroughs did not grant power to enact special and local laws creating boroughs notwithstanding the prohibition against passage of local or special acts.

Reversed and remanded.

Erwin and Fitzgerald, JJ., did not participate.

1. Statutes ⇐77(1)

Legislative act may affect only one of a few areas and yet relate to a matter of statewide concern and common interest

and, thus, not constitute a local or special act within constitutional prohibition against such acts. Const. art. 2, § 19.

2. Statutes ⇐77(1)

In determining whether a legislative act is a local or special act within constitutional prohibition against such acts, ultimate question is whether the act is reasonably related to a matter of common interest to the whole state. Const. art. 2, § 19.

3. Statutes ⇐76(2)

Statute pertaining to organization of Eagle River-Chugiak Borough constituted both special and local legislation within constitutional prohibition against passage of local or special acts if a general act can be made applicable. Laws 1974, c. 145; AS 29.18.030 et seq.; Const. art. 2, § 19.

4. Statutes ⇐76(2)

Nothing in nature of Eagle River-Chugiak area justified departure from general law scheme of incorporating new boroughs; thus, special and local legislation pertaining to organization of the Eagle River-Chugiak Borough violated constitutional prohibition against passage of a local or special act when a general act can be made applicable. Laws 1974, c. 145; AS 29.18.030 et seq.; Const. art. 2, § 19.

5. Statutes ⇐76(2)

Constitutional provision requiring division of state into boroughs and giving legislature broad power over methods by which boroughs may be organized, incorporated or dissolved did not empower legislature to enact special or local laws pertaining to organization of boroughs despite constitutional prohibition against passage of local and special acts when general acts can be made applicable. Laws 1974, c. 145; AS 29.18.030 et seq.; Const. art. 2, § 19; art. 10, § 3.

6. Statutes ⇐76(1)

Constitutional prohibition against enactment of a local or special act if a general act can be made applicable governs exercise of all legislative powers expressly granted by other portions of the Constitution. Const. art. 2, § 19.

7. Constitutional Law ¶15

Different provisions of Constitution should be read so as to avoid conflict whenever possible.

George A. Dickson & John Hedland, David Engles of Rice, Hoppner, Blair & Hedland, Anchorage, for appellants in 2407.

Gerald L. Sharp, City-Borough Atty., Juneau, amicus curiae for appellants in No. 2407.

William F. Tull, Palmer, amicus curiae on behalf of Mat-Su Borough.

John Ken Norman & Gary Thurlow, Anchorage, amicus curiae on behalf of Greater Anchorage Area Borough.

Charles Cranston & Vernon L. Snow, of Gallagher, Snow & Cranston, Anchorage, for appellees in 2407; Cross-Appellants in 2418.

Peter Argetsinger, Asst. Atty. Gen., Anchorage, Avrum Gross, Atty. Gen., Juneau, for State of Alaska.

OPINION

Before RABINOWITZ, C. J., CONNOR and BOOCHEVER, JJ., and DIMOND, J. Pro Tem.

CONNOR, Justice.

This appeal and cross-appeal present the question of whether the formation of the Eagle River-Chugiak Borough was validly accomplished under the Alaska Constitution. At the center of the conflict are two constitutional provisions:

"The legislature shall pass no local or special act if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected." Alaska Const., art. II, § 19.

"The entire State shall be divided into boroughs, organized or unorganized.

They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law." Alaska Const., art. X, § 3.

Appellants assert that the prohibition against local or special acts renders invalid Ch. 145 SLA 1974 by which the Eagle River-Chugiak Borough was organized. They argue that the legislature created a borough by a local or special law when a general law could have been made applicable, and that the "general law" constitutional provision controls the operation of legislative power under art. X, § 3, of the Alaska Constitution. They conclude, therefore, that Ch. 145 SLA 1974 is unconstitutional and that the borough created by the legislature is invalid.

Appellees support the validity of the borough by arguing that the legislative act was not local or special legislation, that even if it was local or special legislation the constitutional prohibition does not apply because a general law cannot be made applicable to the particular subject matter of the legislative act, and that the legislature possesses independent power under art. X, § 3, of the Alaska Constitution, apart from the provisions of art. II, § 19, to create the Eagle River-Chugiak Borough.

I.

The Eagle River-Chugiak area extends from the northeast limits of the City of Anchorage to the Knik River Bridge, and comprises about 738 square miles, slightly less than one-half of the total area of the Greater Anchorage Area Borough as it previously existed. It is located wholly within what was the Greater Anchorage

Area Borough. The area has a population of about 8,500 persons, about 2,500 of whom live in what is regarded as the community of Eagle River. There are no cities of any statutory class within the area. The area lies about 3.7 miles from the corporate limits of the City of Anchorage and about 13 miles from downtown Anchorage. The area is largely residential in land use and most of its work force is employed within what has been the Greater Anchorage Area Borough.

In 1974 the legislature passed Ch. 145 SLA 1974, which became law without the governor's approval. The act provided for an election concurrent with the next statewide election following its passage, to be conducted solely within the Eagle River-Chugiak area, on the question of whether the area should be incorporated as a second class borough. If a majority voted "no" in the first election, the act provided for a subsequent election in which the voters would decide whether the area should be incorporated as a second class city. The election on borough incorporation took place on August 27, 1974, and the proposition passed by a vote of 1,233 to 979. Under the terms of the act, the area then became incorporated.

The act required the Local Boundary Commission to hold a public hearing before the election, and to review the boundaries set forth in the act after the election. Additionally, the Commission was required to promulgate a plan of apportionment, after which the Lieutenant Governor was required to, and did, on December 3, 1974, conduct an election for municipal officers.¹

1. Other transitional steps include a determination by the Local Boundary Commission, subject to judicial review, of the allocation of debts and assets between the new borough and the Greater Anchorage Area Borough, and written notice by the new borough of its intention to assume its powers. These steps have not been taken, but the act requires that the new borough assume its powers no later than the end of the current fiscal year, i. e., June 30, 1975. In the meantime the Greater Anchorage Area Borough

Prior to the enactment of Ch. 145 SLA 1974 there existed, and still exists, a comprehensive statutory system for the incorporation of boroughs, including those to be established within the boundaries of boroughs already in existence.² The general law scheme for organizing a borough consists of a petition to the Department of Community and Regional Affairs, a review of that petition for form by the Department, public hearings by the Local Boundary Commission, and a decision by the Commission as to whether the standards set out in the statutes have been met. In the event of favorable Commission action, an election can be held within the area proposed for incorporation. When a new borough is to be created within an existing one, both a new incorporation and a change in existing boundaries must occur, and the action must be approved at an election within the new borough. The action may also be conditioned upon electoral approval within the existing borough, and it must be submitted to the legislature.

Appellants brought an action on October 30, 1974, seeking to have Ch. 145 SLA 1974 declared unconstitutional and void and seeking to have enforcement of that statute enjoined. On November 22, 1974, appellants sought a preliminary injunction against conducting the election for municipal officers which was scheduled for December 3, 1974. On November 27, 1974, the superior court entered a temporary restraining order which allowed the election to proceed but prohibited certification of the results pending a further hearing. That further hearing was held on Decem-

must continue to assess and collect taxes in the new borough until that date, and allocate to the new borough an amount to be determined by the Local Boundary Commission, subject to judicial review. Under the act the Greater Anchorage Area Borough has been prohibited from transferring assets or authorizing bonded indebtedness in the new borough since September 12, 1974.

2. See AS 29.18.030 et seq.

ber 20, 1974. On December 20, 1974, oral argument was presented to the superior court, and that court entered a declaratory judgment to the effect that Ch. 145 SLA 1974 was local and special legislation, but was not violative of art. II, § 19, of the Alaska Constitution. Appellants filed this appeal on December 23, 1974, and were granted a stay pending the decision of the appeal. This court also entered an order expediting the appeal because the questions presented obviously should be decided promptly for the benefit of the affected governmental entities and the public.

II.

[1] The first question is whether Ch. 145 SLA 1974 is a local or special act. Our previous opinions in *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974), and *Walters v. Cease*, 394 P.2d 670 (Alaska 1964), provide background for the resolution of this question. In *Walters v. Cease*, we held that the Mandatory Borough Act, Ch. 52 SLA 1963, was local and special legislation, and that it could not constitutionally be submitted to the voters for adoption by referendum.³ In *Boucher v. Engstrom*, we held that an initiative to relocate the state capital did not amount to special or local legislation, and thus could be placed upon the ballot. We observed that legislation does not become "local" merely because it operates only on a limited number of geographical areas rather than on a statewide geographical basis. A legislative act may affect only one of a few areas and yet relate to a matter of statewide concern or common interest. *Boucher v. Engstrom*, *supra*, 528 P.2d at 461-62.

[2] *Boucher v. Engstrom* does represent a retrenchment on the definition of

"local" found in *Walters v. Cease*. But the ultimate question is whether a legislative act, attacked as "local" or "special", is reasonably related to a matter of common interest to the whole state.⁴

[3] In the case at bar it appears that Ch. 145 SLA 1974 is both special and local legislation. The act provides a method of creating a new borough which is peculiar to the locality where it is applicable. The subject matter can hardly be said to be of statewide interest or impact.

Specifically, the operation and scope of the act are limited to the Greater Anchorage Area Borough. The act creates law which affects only the governmental structure of the Greater Anchorage Area Borough and the Eagle River-Chugiak area lying within it. It can have no effect upon any other part of the state. It purports to create a new local government, and does so without regard to the general statutory provisions that prescribe the method that otherwise governs the creation of new local governmental entities from existing ones. In our opinion the legislation is clearly special and local in nature.

III.

[4] This brings us to the next question. Appellees argue that even if Ch. 145 SLA 1974 is a local or special act, it is permissible legislation. The Alaska Constitution forbids local or special acts only "if a general act can be made applicable." Whether a general act can be made applicable is subject to judicial determination. We find AS 29.18.030 et seq. to be an applicable general law.

Appellees argue that the Eagle River-Chugiak area is unique and that this justifies the special treatment given to it by the legislature. The trial court found that the

3. Alaska Constitution, art. XI, § 7, provides: "The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications

of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety."

4. *Boucher v. Engstrom*, 528 P.2d 456, 463 (Alaska 1974).

Eagle River area has a separate identity, that it has been a distinct community in the Anchorage bowl, and that it is the only large "exurban" community in Alaska. Appellees point out additionally that the area is separated from the rest of the Greater Anchorage Area Borough by the Chugach Mountains, the Chugach State Park, and by military reservations. A majority of the electorate of the area has voted against a unified Greater Anchorage Area Borough and against extension of areawide power by the borough over the area.

We do not find this justification persuasive. Numerous other localities within organized boroughs can also claim to be unique in certain respects. Examples come readily to mind.

Douglas, with a 1970 population of 1,243, located on an island across from the state capital, can claim to be distinct, providing a largely residential community for persons working in the capital city. Historically Douglas was a city proudly separate from Juneau. Similarly, it could be claimed that College, with a 1970 population of 3,434, is the only community surrounding the central state university. Nearly every neighborhood or locality within an existing borough can assert some peculiarity or characteristic which distinguishes it from the rest of the borough. If this is all that is needed to justify a departure from general law, then the legislature could, by special act, create many new boroughs out of old ones on an ad hoc basis. We do not think this is what the framers of our constitution intended.⁵

We find nothing in the nature of the Eagle River-Chugiak area which justifies a departure from the general law scheme of

incorporating a new borough. Those unusual aspects which appellees have ascribed to the area present no insurmountable barriers to creating a new borough by following the procedures set forth in AS 29.18.030 et seq. Therefore, we hold that Ch. 145 SLA 1974 contravenes the provisions of art. II, § 19, of the Alaska Constitution.

IV.

[5] Finally, appellees urge that under Art. X, § 3, of the Alaska Constitution the legislature is given broad power over the methods by which boroughs may be organized, incorporated, or dissolved. From this, it is argued, the legislature derives power to enact such laws as Ch. 145 SLA 1974 despite the prohibition of art. II, § 19, of the Alaska Constitution.

[6] But Art. II, § 19, governs the exercise of all legislative powers expressly granted by other portions of the constitution. There is no intimation in its language or in the articles concerning local government which would create an exception to this prohibition against local or special laws.

[7] It is an undisputed maxim of constitutional construction that different provisions of the document shall be read so as to avoid conflict whenever possible. Thus, "[w]henver possible, all provisions should be given effect, and each interpreted in light of the others, so as to reconcile them, if possible, and to render none nugatory." *Lemon v. Bossier Parish School Board*, 240 F.Supp. 743, 744 (W.D.La.1965).⁶ We have carefully read the debates and discussions during Alaska's constitutional convention as they relate to the import of art.

5. *Accord*, *State v. Hodgson*, 183 Kan. 272, 326 P.2d 752, 762 (1958); *see also* *Albuquerque Met. Arroyo Flood Control Authority v. Swinburne*, 74 N.M. 487, 394 P.2d 998 (1964).

6. *Accord*, *People v. Western Air Lines*, 42 Cal.2d 621, 268 P.2d 723, 732 (1954), appeal

dismissed, 348 U.S. 859, 75 S.Ct. 87, 99 L.Ed. 677; *Cooper Motors v. Board of County Commissioners*, 131 Colo. 78, 279 P.2d 685, 688 (1955); *Latting v. Cordell*, 197 Okl. 369, 172 P.2d 397, 399 (1946).

II, § 19, and art. X.⁷ We find nothing in these discussions which would indicate that art. X, § 3, was intended to operate as an exception to the "general law" rule of art. II, § 19. Indeed, if every grant of power were read as an exception to the "general law" provision, that provision would be rendered wholly nugatory in its effect.

We conclude that nothing in the local government articles of the Alaska Constitution overrides the prohibition of art. II, § 19.

Having found the questioned act invalid, we reverse the judgment below and remand for the entry of a judgment in favor of appellants.

7. See Const.Conv.Min. pp. 1760-70, 1774, 1824-27, 2768-71 (Jan. 10-25, 1956).

Appendix F

**July 13, 1964, Opinion Letter to
Local Affairs Agency from
Deputy Attorney General Holmes**

July 13, 1964

Mr. Dennis E. Cook
Acting Director
Local Affairs Agency
State Capitol Building
Juneau, Alaska

Re: City Boundary Changes

Dear Mr. Cook:

You have asked whether the Local Boundary Commission may propose incorporation, merger, consolidation, or dissolution of cities to the Legislature. This office is of the opinion that the Commission may propose such changes.

Under Article X, Section 12 of the Alaska Constitution the Commission may

- (1) consider any proposed local government boundary change;
- (2) present proposed changes to the Legislature, which become effective unless disapproved; and
- (3) establish procedures by which boundaries may be adjusted by local action.

AS 44.19.260, which implements this constitutional provision, directs the Commission to consider local government boundary changes requested by the Legislature, Director of Local Affairs, or a political subdivision of the State. The Commission is given authority to present proposed boundary changes to the Legislature.

The question is: What is a "boundary change"? Is incorporation or dissolution of a local government a "boundary change"? Clearly mergers or consolidation of local governments, as well as annexations (Fairview Public Util. Dist. No. 1 v. City of Anchorage, 368 P.2d 540 (1962)), involve boundary changes. But incorporations and dissolutions also necessitate changes in boundaries. Incorporation creates boundaries where none existed; dissolution obliterates them. Both involve radical change.

Mr. Dennis B. Cook, Acting Director
Local Affairs Agency

July 13, 1964
- 2 -

The Alaska Supreme Court in Fairview Public Util. Dist. No. 1 v. City of Anchorage, supra, explained the concept behind the adoption of the constitutional provision authorizing the Commission:

" . . . that political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee - * * * lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, argument for and against boundary change can be analyzed objectively." (p. 543)

Those who drafted the Constitution clearly intended that such vital changes as incorporation and dissolution of local government units be considered boundary changes subject to the Commission's authority.

The Legislature also considers incorporation and dissolution, as well as merger and consolidation, to be boundary changes. In AS 07 (Boroughs) the Legislature gave the Commission the duty to consider and accept or reject any petition proposing incorporation (07.10.110), merger or consolidation (07.35.180), or dissolution (07.35.490) of a borough, or to change the proposed boundaries before accepting the petition. It must be presumed that the Legislature did not grant the Commission more authority than permitted by the Constitution in Article X, Section 12. Since the Legislature has given the Commission power to deal with incorporation and dissolution, as well as merger and consolidation, these must be included within the meaning of "boundary change." The Commission, therefore, has authority to consider and propose such changes in borough boundaries to the Legislature.

The question remains whether these boundary changes may be considered and proposed for cities as well as boroughs. Article X, Section 12 gives the Commission authority to consider and propose boundary changes for local government. Under Article X, Section 2 of the Constitution "all local government shall be vested in boroughs and cities." Any boundary changes which can be considered and proposed for boroughs may be similarly considered and proposed for cities. The Commission may, therefore, consider and propose to the Legislature incorporation, merger, consolidation, and dissolution for cities.

Mr. Dennis E. Cook, Acting Director
Local Affairs Agency

July 13, 1964
- 3 -

AS 29 (Municipal Corporations) provides methods of incorporation, annexation, and dissolution for cities. Since the title was enacted long before Statehood and the Constitution, it makes no mention of the Commission. However, none of the title's provisions are inconsistent with exercise by the Commission of its constitutional authority to consider and propose local government boundary changes.

In summary, the Local Boundary Commission may propose incorporation, merger, consolidation, or dissolution of cities as well as boroughs to the Legislature.

Very truly yours,

WARREN C. COLVER
ATTORNEY GENERAL

By
Michael M. Holmes
Deputy Attorney General

MMH:jj

Dictated by TEF

Appendix G

***LBC Recommendation for Dissolving a City in
the Dillingham – Wood River Area***

Submitted February 2, 1965

II. RECOMMENDATION FOR DISSOLVING A CITY IN THE DILLINGHAM-WOOD RIVER AREA.

Recommendation for confirming the incorporation boundaries of the City of Dillingham and dissolving the City of Wood River.

1. WHEREAS, during a two-week period in the summer of 1963 two cities were incorporated in the Dillingham-Wood River area; and

WHEREAS, the second class city of Dillingham contains the entire area of the fourth class city of Wood River; and

WHEREAS, a fourth class city has no school responsibility and the Dillingham school serves the entire Dillingham-Wood River area; and

WHEREAS, the former Dillingham Public Utility District contained all or part of the territory presently within both cities; and

WHEREAS, the Second Session of the Third State Legislature transferred the assets and liabilities of the Dillingham Public Utility District to the City of Dillingham, (ch 45, SLA 1964); and

WHEREAS, the director of the Local Affairs Agency petitioned the Local Boundary Commission to consider the Dillingham-Wood River incorporation and boundary dispute; and

WHEREAS, the Local Boundary Commission in September, 1964, conducted a hearing at the City of Dillingham to consider the dispute; and

WHEREAS, the Commission determined (1) that the Dillingham-Wood River area needed and could support only a single unit of local government;

(2) that every opportunity for settlement of the dispute at the local level should be allowed before the State imposed a solution.

(3) that, if by January 1, the residents and local officials of the area had not taken positive steps toward the formation of a single city or borough capable of meeting the area's needs and responsibilities in local government, the Commission would recommend a solution to the next session of the Legislature; and

WHEREAS, no steps have been taken at the local level to settle the incorporation and boundary conflict;

NOW THEREFORE, pursuant to Sec 12, Art X of the State Constitution, the Local Boundary Commission recommends that:

(1) the City of Wood River incorporated as described below be dissolved--

Starting at a point of beginning at mean low tide line at the west side of the entrance to the Dillingham Small Boat Harbor; thence in a westerly and southerly direction following the mean low tide line along the shore of the Nushagak River to 59°00' north latitude to point No. 2; thence west of true to 158°35' west longitude to point No. 3; thence true north to 59°05' north latitude to point No. 4; thence due east of true to the western shore line of Wood River to point No. 5; thence in a southerly direction along the shoreline of Wood River to point No. 6 located approximately at 158°26' west longitude, 59°04' north latitude; thence southwesterly at approximately 135 degrees from true north to the west side of Scandanavian Creek where it intersects the highway to point No. 7; thence along the west shore of Scandanavian Creek and the Dillingham Small Boat Harbor to the point of beginning; said land situated within the Anchorage Recording Precinct of the Third Judicial Division of the State of Alaska;

(2) the assets and liabilities of the City of Wood River be transferred to the City of Dillingham;

(3) the boundaries of the City of Dillingham be defined as follows--

Starting at a point of beginning at mean low tide at the point where 59°00' North Latitude intersects the Kanakanak shoreline; thence West of true to point No. 2 at 158°35' West Longitude; thence true north to point No. 3 at 59°05' North Latitude; thence East of true to point No. 4 at the intersection of 59°05' North Latitude with the westerly shoreline of Wood River; thence in a southerly direction along the shoreline to the point of beginning; said land being situated within the Bristol Bay Recording District of the Third Judicial District, State of Alaska;

In accordance with Sec 12, Art X of the State Constitution, this recommendation shall become effective forty-five days after its presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

2. Although it is not within the powers of the Commission to include as part of its formal proposal a recommendation that a new election of officers be held, the Commission feels that a special election for the selection of city officials should be held in the near future. This suggestion is not meant to reflect in any way upon officials now holding local office. However, current City of Dillingham officials were chosen amidst a dispute which has caused serious conflict in the area. Resignation of current city officers and an election of new officials by an electorate knowingly part of a single city would be a logical first step in reuniting the larger Dillingham community.

Appendix H

Oesau v. City of Dillingham
439 P.2d 179 (Alaska 1968)

Donald OESAU, Lloyd O'Conner, Orville
Braswell, Lyle Smith, and Marie
Barry, Appellants,

v.

CITY OF DILLINGHAM, Appellee.

No. 856.

Supreme Court of Alaska.

April 1, 1968.

Action by second-class city to have fourth-class city declared dissolved and for other relief. The Superior Court, Third Judicial District, Hubert A. Gilbert, J., granted summary judgment to the second-class city, and the council members of the fourth-class city appealed. The Supreme Court, Dimond, J., held that where a fourth-class city was within the boundaries of a second-class city and the boundary commission's proposal to confirm boundaries of the second-class city and to dissolve the fourth-class city was not disapproved by the Legislature, the proposal became effective pursuant to constitutional provision and statutes relating to the boundary commission, and the fourth-class

their testimony on their views of the same objective features. Instead they may rely on entirely separate data, since the theoretical bases underlying their respective approaches may differ radically. Before an attorney can even hope to deal on cross-examination with an unfavorable expert opinion he must have some idea of the bases of that opinion and the data relied upon. • • • He may need advice of his own experts to do so and indeed, in certain cases, his experts might require time to make further inspections and analyses of their own.

14 Stan.L.Rev. 455, 484-485 (1962)
(footnotes omitted).

36. *Miller v. Harpstef*, 392 P.2d 21 (Alaska 1964).

37. *Mathis v. Hilderbrand*, 416 P.2d 8, 10 (Alaska 1966).

city was dissolved though statutes providing specifically for dissolution of cities were not followed.

Affirmed.

1. Municipal Corporations \S 51

Where fourth-class city was within boundaries of second-class city and boundary commission's proposal to confirm boundaries of second-class city and to dissolve fourth-class city was not disapproved by Legislature, proposal became effective pursuant to constitutional provision and statutes relating to boundary commission, and fourth-class city was dissolved though statutes providing specifically for dissolution of cities were not followed. AS 07.05.030, 29.10.543-29.10.549, 29.15.010-29.15.300, 29.25.010-29.25.510, 29.25.500, 29.80.010-29.80.050, 44.19.260(b) (1, 2), 44.19.340; Const. art. 10, $\S\S$ 7, 12; Laws 1965, c. 51.

2. Municipal Corporations \S 24

Policy underlying constitutional provision for local boundary commission, was that boundaries be established at state level. Const. art. 10, \S 12.

James K. Tallman, Anchorage, for appellants.

David J. Pree and Robert C. Ely, of Ely, Guess, Rudd & Havelock, Anchorage, for appellee.

Before NESBETT, C. J., and DIMOND and RABINOWITZ, JJ.

OPINION

DIMOND, Justice.

Prior to 1963, the platted townsite of Dillingham, Alaska was not an incorporated municipality, but was a part of a larger area which had been incorporated as the Dillingham Public Utility District No. 1. In enacting legislation pertaining to bor-

ough government in Alaska, the legislature provided that special service districts, such as the Dillingham Public Utility District, would "continue to exercise their powers and functions under existing law until July 1, 1964."¹ Thus, the dissolution of the Dillingham Public Utility District No. 1 was foreordained.

In 1963 there were two separate moves to establish incorporated municipal government in Dillingham. On April 3, 1963, one group of persons filed a petition in the district court to incorporate as a fourth class city, to be known as Wood River, Alaska, all of the area of the Dillingham Public Utility District except the area encompassed by the platted townsite of Dillingham. Following a hearing and an election pursuant to statute² the district court on June 30, 1963 entered an order declaring that Wood River was incorporated as a city of the fourth class.

In the meantime, on April 24, 1963, another group of persons filed a petition in the superior court proposing incorporation as a second class city all of the area of the Dillingham Public Utility District No. 1. Following a hearing and an election pursuant to statute³, the superior court entered an order on July 12, 1963 declaring Dillingham incorporated as a second class city. The boundaries of the city encompassed the entire area of the Dillingham Public Utility District No. 1, including the area covered by the fourth class city of Wood River which had been declared incorporated by the district court a few days earlier.

These two separate incorporations resulted in a boundary dispute between Wood River and Dillingham—Wood River claiming to be an incorporated city in its own right, and Dillingham claiming that its boundaries included Wood River. A report of this boundary dispute was made to the state local boundary commission by the Local Affairs Agency in August 1964. Following a hearing in Dillingham held

1. AS 07.05.030.

2. AS 29.25.010-29.25.510.

3. AS 29.15.010-29.15.300.

pursuant to law ⁴, the boundary commission issued a memorandum providing that if by January 1, 1965 the residents of the Dillingham-Wood River area had not taken positive steps toward the formation of an organized borough or a single city capable of meeting the area's needs and responsibilities in local government, the commission would propose a solution. Nothing was done by the residents of the area to solve the problem, and on February 2, 1965 the boundary commission, in accordance with law, ⁵ recommended to the legislature that the fourth class city of Wood River be dissolved, that the assets and liabilities of Wood River be transferred to the City of Dillingham, and that the boundaries of the City of Dillingham be defined so as to include the area of Wood River. The legislature did not disapprove of the commission's recommendation, and hence it became effective by virtue of the state constitution and statute. ⁶ In addition, during the 1965 legislative session where the boundary commission recommendation was presented, the legislature enacted a statute recognizing the

dissolution of Wood River and the confirmation of the boundaries of the City of Dillingham pursuant to the commission's recommendation, and required that a special election be held for the offices of mayor and council constituting the governing body of the City of Dillingham. ⁷

This action was commenced in May 1966 by the City of Dillingham against the members of the city council of Wood River to have Wood River declared to be dissolved and a nullity and to enjoin those persons purporting to act on behalf of the city of Wood River from so acting. Summary judgment was granted in favor of appellee, the court ordering as follows:

ORDERED that there are no issues of fact in dispute between the parties to this action and that the law is clear that the City of Wood River, Alaska, incorporated as a city of the fourth class, July 30th, 1963, ceased to exist on April 9th, 1965 pursuant to "Recommendations for Local Boundary Changes Submitted to the Fourth State Legislature, First Session

4. AS 44.19.260(b) (1) provides:
The local boundary commission may conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services
• • •
5. AS 44.19.260(b) (2) provides:
The local boundary commission may present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years.
6. Art. X, § 12 of the Constitution of the State of Alaska provides:
Boundaries. A local boundary commission or board shall be established

by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

AS 44.19.340 provides:

When boundary change takes effect.
When a local government boundary change is proposed to the legislature during the first 10 days of any regular session, the change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

7. SLA 1965, ch. 51.

Assembled: . . . II" submitted February 2nd, 1965, which recommendations became law pursuant to Sections 44.19.260 AS and 44.19.340 AS, as confirmed by Chapter 51, Session Laws of Alaska, 1965; and,

IT IS FURTHER ORDERED that, following March 19th, 1965, and thereafter all the residents of the area described in the Order incorporating the second class City of Dillingham, whether or not they were included within the limits of the fourth class [city] of Wood River, owed to the government of the Second Class City of Dillingham, all of the obligations owed by other citizens of the City of Dillingham, including the obligation to pay real property assessments thereafter validly made and generally to be governed in all respects by the government of the Second Class City of Dillingham.

This appeal followed.

[1, 2] Article X, Section 7 of the Alaska Constitution provides that cities may be dissolved "in a manner prescribed by law." The legislature has provided for the dissolution of cities in AS 29.10.543-29.10.549, 29.25.500 and 29.80.010-29.80.050. These statutes generally provide for dissolution upon an election when the population of a city drops below a certain number, or upon a court order after a finding that a city has ceased to function as a city government. Since none of these methods was followed in the dissolution of the city of Wood River, appellants maintain that Wood River was not dissolved "in the manner provided by law", and therefore still exists as a municipal corporation in its own right.

The local boundary commission has the constitutional authority to "consider any proposed local government boundary change." It may present any such proposed change to the legislature, and the change becomes effective "forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by

a resolution concurred in by a majority of the members of each house." ⁸

In *Fairview Public Utility District No. 1 v. City of Anchorage*⁹ we held that the authority vested in the local boundary commission by the Constitution was sufficient to effect, by means of a local government boundary change proposed by the commission, the annexation to the City of Anchorage of the Fairview Public Utility District No. 1, an area entirely surrounded by the city. The situation here is not dissimilar. The fourth class city of Wood River was encompassed within the boundaries of the second class City of Dillingham. Although the boundary commission's proposal was to confirm the boundaries of the City of Dillingham and to dissolve the city of Wood River, rather than to annex Wood River to Dillingham, the effect is the same. When the legislature failed to disapprove of the commission's proposal, the commission's local boundary change, which consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the City of Dillingham, had the effect of making Wood River a part of the City of Dillingham.

When the boundary commission's proposal for boundary change became effective, the city of Wood River was dissolved, even though the statutory procedures for dissolution of cities were not followed. The basic purpose for creating the boundary commission and conferring upon it the powers that it possesses was to obviate the type of situation that existed here where there was a controversy over municipal boundaries which apparently could not be settled at the local level. As we pointed out in the *Fairview* case, the concept that was in mind when the local boundary commission section of the Constitution was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and

8. Alaska Const. art. X, § 12.

9. 368 P.2d 540 (Alaska), appeal dismissed, 371 U.S. 5, 83 S.Ct. 39, 9 L.Ed.2d 49 (1962).

that boundaries should be established at the state level.¹⁰ The purpose of the boundary change effected in this case by the boundary commission and the legislature was to establish boundaries at a state level, and resolve a conflict that could not be properly solved at the local level, by doing away with two separate governments in a single community and avoiding multiplication of facilities and

services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos. When the boundary change became effective, the city of Wood River was extinguished as a municipal corporation and its property, powers and duties were then vested in the City of Dillingham.¹¹

The judgment is affirmed.

10. Fairview Pub.Util.Dist. No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

11. Id. at 545.

Appendix I

**Senate Concurrent Resolution 12
and
Senate Concurrent Resolution 17**

SENATE CONCURRENT RESOLUTION NO. 12

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATORS WILKEN, Bunde, Cowdery, Green, Ogan, Seekins, Ben Stevens, Gary Stevens, Wagoner

Introduced: 4/28/03

Referred: Community and Regional Affairs, State Affairs

A RESOLUTION

1 **Requesting the Local Boundary Commission to consider borough incorporation for**
2 **certain unorganized areas.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** Article I, sec. 1, Constitution of the State of Alaska, provides that all
5 persons are equal and entitled to equal rights, opportunities, and protection under the law, and
6 that all persons have corresponding obligations to the people and to the state; and

7 **WHEREAS** the State of Alaska requires organized boroughs, home rule cities in the
8 unorganized borough, and first class cities in the unorganized borough to operate a system of
9 municipal public schools as provided in AS 29.35.160 and 29.35.260(b); and

10 **WHEREAS** the State of Alaska significantly reduces public school funding to
11 organized boroughs, home rule cities in the unorganized borough, and first class cities in the
12 unorganized borough by an amount equal to the "local contribution" required of those
13 municipalities under AS 14.17.410, while no corresponding public school funding reductions
14 are imposed on the remainder of Alaska for operation of regional educational attendance
15 areas; and

16 **WHEREAS** the State of Alaska imposes significant obligations to provide other

1 fundamental public services, such as land use regulation, upon organized boroughs, home rule
2 cities in the unorganized borough, and first class cities in the unorganized borough, while no
3 corresponding obligations are imposed on the remainder of Alaska; and

4 **WHEREAS** no reasonable basis, such as fiscal or administrative capacity, exists to
5 distinguish those Alaskans who do not have obligations to provide a system of public schools
6 and other fundamental public services from those Alaskans within organized boroughs, home
7 rule cities in the unorganized borough, and first class cities in the unorganized borough upon
8 whom the State of Alaska has imposed significant financial and other obligations to provide a
9 system of public schools and other fundamental public services; and

10 **WHEREAS** borough incorporation of unorganized areas with relatively significant
11 populations residing outside home rule and first class cities, and with the fiscal and
12 administrative capacity to operate boroughs, would establish a reasonable basis to distinguish
13 Alaskans that have significant obligations to provide a system of public schools and other
14 fundamental public services from those with no such obligations; and

15 **WHEREAS** the Local Boundary Commission determined in its February 2003 report
16 entitled: "Unorganized Areas of Alaska that Meet Borough Incorporation Standards," that
17 seven unorganized areas of Alaska meet standards for borough incorporation, including fiscal
18 and administrative capacity to operate boroughs; and

19 **WHEREAS** four of the seven unorganized areas identified in the Local Boundary
20 Commission's February 2003 report have relatively significant populations residing outside
21 home rule and first class cities; those areas are the Upper Tanana Basin Model Borough, the
22 Copper River Basin Model Borough, the Glacier Bay Model Borough, and the Chatham
23 Region Model Borough, as those unorganized areas are defined by 3 AAC 110.990(9); and

24 **WHEREAS** the purpose of the local government article of the Constitution of the
25 State of Alaska is to provide for maximum local self-government with a minimum of local
26 government units, and to prevent duplication of tax-levying jurisdictions; and

27 **WHEREAS** Article X, sec. 1, Constitution of the State of Alaska, encourages
28 organization of boroughs to achieve the purpose of the local government article; and

29 **WHEREAS** the local option method of borough incorporation, first enacted in 1961
30 and currently codified in AS 29.05.060 - 29.05.150, has been generally ineffective in
31 promoting the fundamental constitutional objective of borough organization; and

1 **WHEREAS** the Local Boundary Commission has authority under art. X, sec. 12,
2 Constitution of the State of Alaska, to present borough incorporation proposals to the
3 legislature; and

4 **WHEREAS** the provisions of AS 44.33.812 require the Local Boundary Commission
5 to adopt regulations providing procedures for borough incorporation; and

6 **WHEREAS** the Local Boundary Commission has adopted procedures for
7 incorporation of boroughs under 3 AAC 110.400 - 3 AAC 110.660, including procedures in 3
8 AAC 110.610 for legislative review under art. X, sec. 12, Constitution of the State of Alaska;
9 and

10 **WHEREAS** the provisions of AS 44.33.812 require the Local Boundary Commission
11 to consider borough incorporation for areas requested of it by the legislature;

12 **BE IT RESOLVED** that the Alaska State Legislature requests the Local Boundary
13 Commission to consider borough incorporation for the Upper Tanana Basin Model Borough,
14 the Copper River Basin Model Borough, the Glacier Bay Model Borough, and the Chatham
15 Region Model Borough; and be it

16 **FURTHER RESOLVED** that the Alaska State Legislature requests the Local
17 Boundary Commission to present a recommendation for borough incorporation under the
18 legislative review method in art. X, sec. 12, Constitution of the State of Alaska, for each
19 model borough listed in this resolution that is determined by the Local Boundary
20 Commission, with any appropriate amendments or conditions, to meet applicable borough
21 incorporation standards under the Constitution of the State of Alaska, Local Boundary
22 Commission regulations, AS 29.05.031 and 29.05.100; and be it

23 **FURTHER RESOLVED** that the Alaska State Legislature requests the Local
24 Boundary Commission to include in each legislative review recommendation for borough
25 incorporation submitted under this resolution, details concerning the class, name, boundaries,
26 assembly composition and apportionment, proposed operating budget, taxes, and other
27 areawide and nonareawide powers to be exercised, measures to ensure a smooth transition to
28 organized borough status, and other elements essential to the establishment of each particular
29 recommended borough.

30 **COPIES** of this resolution shall be sent to the Honorable Frank Murkowski, Governor
31 of Alaska; the Honorable Darroll Hargraves, Chair, Local Boundary Commission; and to the

- 1 Honorable Edgar Blatchford, Commissioner, Department of Community and Economic
- 2 Development.

SENATE CONCURRENT RESOLUTION NO. 17

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR DYSON

Introduced: 5/19/03

Referred: Community and Regional Affairs, State Affairs

A RESOLUTION

1 **Requesting the Local Boundary Commission to consider borough incorporation for**
2 **certain areas.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the purpose of the local government article of the Constitution of the
5 State of Alaska is to provide for maximum local self-government with a minimum of local
6 government units, and to prevent duplication of tax-levying jurisdictions; and

7 **WHEREAS** Article X, sec. 1, Constitution of the State of Alaska, encourages
8 organization of boroughs to achieve the purpose of the local government article; and

9 **WHEREAS** the local option method of borough incorporation, first enacted in 1961
10 and currently codified in AS 29.05.060 - 29.05.150, has been generally ineffective in
11 promoting the fundamental constitutional objective of achieving maximum local government
12 and borough organization; and

13 **WHEREAS** the Local Boundary Commission has authority under art. X, sec. 12,
14 Constitution of the State of Alaska, to present borough incorporation proposals to the
15 legislature; and

16 **WHEREAS** the provisions of AS 44.33.812 require the Local Boundary Commission

1 to adopt regulations providing procedures for borough incorporation; and

2 **WHEREAS** the Local Boundary Commission has adopted procedures for
3 incorporation of boroughs under 3 AAC 110.400 - 3 AAC 110.660, including procedures in 3
4 AAC 110.610 for legislative review under art. X, sec. 12, Constitution of the State of Alaska;
5 and

6 **WHEREAS** the people of the communities in the areas identified for incorporation in
7 this resolution have been frustrated for a long time in their efforts to organize the areas in
8 which they are located as they want; and

9 **WHEREAS** the present law and model borough studies have not allowed the kind of
10 self-determination the people of these communities desire; and

11 **WHEREAS** the provisions of AS 44.33.812 require the Local Boundary Commission
12 to consider borough incorporation for areas requested of it by the legislature;

13 **BE IT RESOLVED** that the Alaska State Legislature requests the Local Boundary
14 Commission to consider borough incorporation for the following areas:

15 (1) Skagway Borough - bounded on the north and east by the United States -
16 Canada border; bounded on the south and west by the Haines Borough boundary; the northern
17 point is Mount Foster at the United States - Canada border known as "Boundary Peak 123,"
18 135 degrees 30 minutes West longitude; from there running southeast conterminous with the
19 United States - Canada border for approximately 31 miles to the Mount Bagot area where it
20 intersects with the Haines Borough boundary; from there running due west for approximately
21 12 miles to the middle of Taiya Inlet, at approximately 135 degrees 22 minutes, West
22 longitude, and close to the western edge of Range 60 East, Copper River Meridian, which is
23 the southernmost point; from there running approximately 29 miles in a northwesterly
24 direction to the United States - Canada border, conterminous with the Haines Borough
25 boundary and intersecting with the United States - Canada border just east of the Chilkat
26 Glacier at "Boundary Peak 124"; from there running about 9.5 miles northeast along the
27 United States - Canada border to the starting point at Mount Foster;

28 (2) Eagle River Borough - includes the areas of Elmendorf Air Force Base,
29 Fort Richardson, South Fork, Eagle River Valley, Eagle River, Birchwood, Peters Creek,
30 Eklutna, and Eklutna Lake, and the land to the Matanuska River;

31 (3) Wrangell Borough - boundaries are coterminous with the Wrangell Ranger

District boundaries established by the United States Forest Service, as depicted in the Tongass National Forest Secondary Base Map Series on Sheet Nos. 18 (1982), 19 (1982), 21 (1980), 22 (1980), 23 (1983), 24 (1983), 26 (1980), and 27 (1980), except that the northern boundary of the Wrangell Borough shall commence from a point beginning at the western boundary of the Wrangell Ranger District at the northernmost point of Pocket Island, thence proceeding in a generally northeasterly direction to the westernmost point of land in Township 59 South, Range 83 East, Copper River Meridian, Section 1, thence proceeding in a generally northeasterly direction along the watershed divide between LeConte Bay and the Stikine River, including Wilkes Peak, to the international boundary between Canada and the United States;

(4) Delta Borough - boundaries are coterminous with the Delta/Greely regional educational attendance area; and be it

FURTHER RESOLVED that the Alaska State Legislature requests the Local Boundary Commission to present a recommendation for borough incorporation under the legislative review method in art. X, sec. 12, Constitution of the State of Alaska, for each model borough listed in this resolution that is determined by the Local Boundary Commission, with any appropriate amendments or conditions, to meet applicable borough incorporation standards under the Constitution of the State of Alaska, Local Boundary Commission regulations, AS 29.05.031 and 29.05.100; and be it

FURTHER RESOLVED that the Alaska State Legislature requests the Local Boundary Commission to include in each legislative review recommendation for borough incorporation submitted under this resolution, details concerning the class, name, boundaries, assembly composition and apportionment, proposed operating budget, taxes, and other areawide and nonareawide powers to be exercised, measures to ensure a smooth transition to organized borough status, and other elements essential to the establishment of each particular recommended borough; and be it

FURTHER RESOLVED that the Alaska State Legislature requests the Local Boundary Commission to recommend to the legislature changes to statute, regulation, and policy to minimize the difficulty in organizing as boroughs the areas described in this resolution.

COPIES of this resolution shall be sent to the Honorable Frank Murkowski, Governor

1 of Alaska; the Honorable Darroll Hargraves, Chair, Local Boundary Commission; and to the
2 Honorable Edgar Blatchford, Commissioner, Department of Community and Economic
3 Development.

Appendix J

Local Boundary Commission (LBC) Procedural Regulations re Petitions

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Part 15 Local Boundary Commission

Chapter 110. Municipal Boundary Changes. (3 AAC 110.400 - 3 AAC 110.990)

Article

- 12. Procedures for Petitioning. (3 AAC 110.400 - 3 AAC 110.660)
- 13. General Provisions. (3 AAC 110.900 - 3 AAC 110.990)

Annotations

Editor's note: As of July 31, 1992, Register 123, this chapter (formerly 19 AAC 10) was reorganized and the new organization is substantially different from what preceded it. Except for 3 AAC 110.045 - 3 AAC 110.060 (Article 2) (formerly 19 AAC 10.045 - 19 AAC 10.060 (Article 2)), the history notes do not reflect the history of section numbers or the subject matter of those sections before Register 123. Except for Article 2, each article has been rewritten in its entirety.

As of Register 151 (October 1999), the provisions of former 19 AAC 10 were relocated by the regulations attorney under AS 44.62.125 (b)(6) to 3 AAC 110, in accordance with ch. 58, SLA 1999.

Article 12 Procedures for Petitioning

	Section
400. Applicability.	530. Departmental report.
410. Petitioners.	540. Amendments and withdrawal.
420. Petition.	550. Commission public hearing.
425. Legislative review annexation petitions.	560. Commission hearing procedures.
430. Consolidation of petitions.	570. Decisional meeting.
440. Technical review of petition.	580. Reconsideration.
450. Notice of petition.	590. Certain local action annexations.
460. Service of petition.	600. Local action/local option elections.
470. Proof of notice and service.	610. Legislative review.
480. Responsive briefs and written comments.	620. Judicial review.
490. Reply brief.	630. Effective date and certification.
500. Limitations on advocacy.	640. Scheduling.
510. Informational sessions.	650. Resubmittals and reversals.
520. Departmental public meetings.	660. Purpose of procedural regulations; relaxation or suspension of procedural regulation.

3 AAC 110.400. Applicability

Except as provided in 3 AAC 110.590, 3 AAC 110.410 - 3 AAC 110.660 apply to petitions for city reclassification under AS 29.04, for incorporation under AS 29.05, and for alterations to municipalities under AS 29.06. However, only those sections of 3 AAC 110.410 - 3 AAC 110.660 with which compliance is required under 3 AAC 110.590 apply to an annexation petition filed under a local action method provided for in AS 29.06.040 (c)(2) or (c)(3).

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 20.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.460; AS 44.33.812

3 AAC 110.410. Petitioners

(a) A petition for a proposed action by the commission under this chapter may be initiated by

- (1) the legislature;
- (2) the commissioner;
- (3) the staff of the commission or a person designated by the commission, subject

to (d) of this section;

- (4) a political subdivision of the state;
- (5) a regional educational attendance area;
- (6) a coastal resource service area;
- (7) at least 10 percent of the persons registered to vote in a political subdivision of

the state, in a regional educational attendance area, or in a coastal resource service area, if the petition seeks the alteration of a municipality under AS 29.06, other than by local option under AS 29.06.090 (b)(2) or AS 29.06.450 (a)(2);

(8) at least 10 percent of the persons registered to vote in a territory proposed for annexation by election under AS 29.06.040 (c)(1) or by legislative review under AS 29.06.040 (b) or AS 44.33.812 (b)(2);

(9) at least 25 percent of the persons registered to vote in a territory proposed for detachment by election under AS 29.06.040 (c)(1) or by legislative review under AS 29.06.040 (b) or AS 44.33.812 (b)(2); or

(10) the number of qualified voters required under

(A) AS 29.04.040 , if the petition seeks reclassification of a city;

(B) AS 29.05.060 , if the petition seeks a municipal incorporation; and

(C) AS 29.06.090 (b)(2) or AS 29.06.450 (a)(2), if the petition is a local option petition under those provisions.

(b) If, to achieve compliance with AS 29.06.100 (a), a petition for merger or consolidation must be signed by a percentage of voters from one or more cities within a borough, and also by a percentage of voters in that borough, all voters who sign the petition as borough voters must reside outside any city or cities joining that petition. The number of borough voters required to sign the petition must be based on the number of registered voters or the number of votes cast in the area of the borough outside any city or cities joining the petition.

(c) The provisions of (a)(10) of this section may not be construed to apply to petition procedures established by the commission under AS 44.33.812 (a)(2), AS 29.06.040 (c) for annexation and detachment, AS 29.06.090 (b)(1) for merger and consolidation, or AS 29.06.450 (a)(1) for dissolution.

(d) The staff of the commission or a person designated by the commission may initiate a petition if the commission

(1) determines that the action proposed will likely promote the standards established under the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter; and

(2) directs the staff or designated person to prepare a petition by a motion approved by a majority of the appointed membership of the commission.

(e) The entity or group initiating a petition under (a) of this section is the petitioner. A petition must include a designation of one person as representative of the petitioner.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.460; AS 44.33.812

3 AAC 110.420. Petition

(a) A proposal for one or more actions by the commission under this chapter is initiated by filing a petition and supporting materials with the department.

(b) A petition must be filed on forms provided by the department. On the forms provided, the department shall require that the petition include the following information and supporting materials:

(1) the name of the petitioner;

(2) the name and class of any

(A) existing municipal government for which a change is proposed; and

(B) proposed municipal government;

(3) a general description of the nature of the proposed commission action;

- (4) a general description of the area proposed for change;
- (5) a statement of reasons for the petition;
- (6) legal descriptions, maps, and plats for a proposed municipality, or for any existing municipality for which a change is proposed;
- (7) the size of the area proposed for change;
- (8) the physical address and mailing address of the petitioner's representative designated under 3 AAC 110.410(e) , and the telephone number, facsimile number, and electronic mail address, if any, for the representative;
- (9) data estimating the population of the area proposed for change;
- (10) information relating to public notice and service of the petition;
- (11) the following tax data:
 - (A) the assessed or estimated value of taxable property in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which a change is proposed, levies or proposes to levy property taxes;
 - (B) projected taxable sales in the territory proposed for change, if the proposed municipal government, or any existing municipal government for which the change is proposed, levies or proposes to levy sales taxes;
 - (C) each municipal government tax levy currently in effect in the territory proposed for change.
- (12) a three-year projection of revenue, operating expenditures, and capital expenditures for a proposed municipality, or for any existing municipality for which a change is proposed;
- (13) information about any existing long-term municipal debt;
- (14) information about the powers and functions of
 - (A) a proposed municipality;
 - (B) any existing municipality for which a change is proposed, before and after the proposed change; and
 - (C) alternative service providers, including regional educational attendance areas and other service areas within the area proposed for change;
- (15) the transition plan required under 3 AAC 110.900;
- (16) information about the composition and apportionment of the governing body of
 - (A) a proposed municipality; and
 - (B) any existing municipality for which a change is proposed, before and after the proposed change;
- (17) information regarding any effects of the proposed change upon civil and political rights for purposes of 42 U.S.C. 1971 - 1974 (Voting Rights Act of 1965);
- (18) a supporting brief that provides a detailed explanation of how the proposal satisfies each constitutional, statutory, and regulatory standard that is relevant to the proposed commission action;
- (19) documentation demonstrating that the petitioner is authorized to file the petition under 3 AAC 110.410;
- (20) for petitions to incorporate or consolidate a home rule city or borough, the proposed municipal charter;
- (21) an affidavit from the petitioner's representative that, to the best of the representative's knowledge, information, and belief, formed after reasonable inquiry, the information in the petition is true and accurate.

(c) The petitioner shall provide the department with a copy of the petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.460; AS 44.33.812

3 AAC 110.425. Legislative review annexation petitions

(a) Before a petition for annexation by the legislative review process may be submitted to the department under 3 AAC 110.420, the prospective petitioner shall prepare a complete draft of the prospective annexation petition and a summary of the prospective petition. The prospective petitioner shall also conduct a public hearing on the annexation proposal in accordance with (d) - (e) of this section.

(b) The prospective annexation petition required under (a) of this section shall be prepared using forms provided by the department under 3 AAC 110.420. The summary required under (a) of this section must include a map of the territory proposed for annexation, a synopsis of the views of the prospective petitioner regarding the application of applicable annexation standards to the proposed annexation, a summary of the reasonably anticipated effects of annexation, and an abstract of the transition plan required under 3 AAC 110.990.

(c) The prospective annexation petition and the summary shall be made available to the public on or before the first publication or posting of the notice of the hearing required under (e) of this section. The prospective petitioner shall make one copy of the prospective petition available for public review at a convenient location in or near the territory proposed for annexation for every 500 individuals reasonably estimated to reside in the territory proposed for annexation. However, the prospective petitioner need not provide more than five copies of the prospective petition for public review regardless of the population of the territory proposed for annexation. The prospective petitioner shall make the summary of the annexation proposal available for distribution to the public without charge at a convenient location in or near the territory proposed for annexation.

(d) The public hearing required under (a) of this section must address appropriate annexation standards and their application to the annexation proposal, legislative review annexation procedures, the reasonably anticipated effects of the proposed annexation, and the proposed transition plan required under 3 AAC 110.900. The hearing must be held at a convenient location in or near the territory proposed for annexation. The hearing must allow a period for comment on the proposal from members of the public. If the prospective petitioner is a municipality, the governing body shall conduct the hearing.

(e) In the manner provided for a hearing of the commission under 3 AAC 110.550, a prospective petitioner shall give public notice and a public service announcement of the public hearing required under (a) of this section.

(f) The department shall specify the text of the public notice required under (e) of this section, to ensure that the notice contains the following information:

- (1) the title of the notice of the hearing;
- (2) the name of the prospective petitioner;

(3) a brief description of the nature of the prospective legislative review annexation proposal, including the size and general location of the area under consideration;

(4) information about where and when the prospective petition is available for public review;

(5) information about where the public may receive, without charge, a summary of the prospective petition;

(6) a statement concerning who will conduct the hearing;

(7) a statement of the scope of the hearing;

(8) notification that public comments will be accepted during the hearing, and a statement of any time limits to be placed on individuals who offer comments;

(9) the date, time, and place of the hearing;

(10) a statement of compliance with 42 U.S.C. 12101 - 12213 (Americans with Disabilities Act);

(11) the name and telephone number of a representative of the prospective petitioner to contact for additional information.

(g) The department shall specify the text of the public service announcement required under (e) of this section, to ensure that the announcement contains the following information:

(1) the title of the public service announcement;

(2) the period during which the public service announcement is requested to be broadcast;

(3) the name of the prospective petitioner;

(4) a description of the prospective proposed action;

(5) a statement of the size and general location of the area being considered for annexation;

(6) information about where and when the prospective petition is available for public review;

(7) information about where the public may receive, without charge, a summary of the prospective petition;

(8) a statement concerning who will conduct the hearing;

(9) the date, time, and place of the hearing;

(10) the name and telephone number of a representative of the prospective petitioner to contact for additional information.

(h) When filing a petition with the department under this section, the prospective petitioner shall submit evidence of compliance with the requirements of (e) of this section, a written summary or transcript of the hearing, a copy of any written materials received during the hearing, and an audio recording of the hearing.

History: Eff. 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 44.33.812

3 AAC 110.430. Consolidation of petitions

If two or more petitions pending action by the commission affect all or some portion of the same territory, the chair of the commission may consolidate the informational session, briefing schedule, department reports, commission hearing, decisional meeting, or other procedure under this chapter for one or more of those petitions. The commission may consider relevant information from concurrent or conflicting petitions during the process of rendering its decision on any one petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.470; AS 44.33.812; AS 44.33.814; AS 44.33.818; AS 44.33.822; AS 44.33.826

3 AAC 110.440. Technical review of petition

(a) The department shall review the petition and supporting materials to determine whether they include a budget sufficient for commission review, a transition plan sufficient for commission review, and other required information. When applicable, the department shall also determine whether the petition contains the legally required number of valid signatures. The department shall complete the technical review of the petition within 45 days after receiving it, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review.

(b) The petitioner is primarily responsible for supplying all supplemental information and documents reasonably necessary for the technical review process, including information identifying who is registered to vote, who resides in a territory, and the number of persons who voted in the territory during the last election.

(c) If it determines that the petition or supporting materials are deficient in form or content, the department shall consult with the chair of the commission. With the concurrence of the chair of the commission, the department shall return the defective petition or supporting materials to the petitioner for correction or completion. With the concurrence of the chair of the commission, the department shall determine whether the deficiencies in the petition are significant enough to require new authorization for the filing of the corrected or completed petition. The department shall complete the technical review of any corrections or materials needed to complete the petition within 30 days after receiving them, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review. If the department determines that the petition and brief are in substantial compliance with applicable provisions of AS 29.04, AS 29.05, AS 29.06, and this chapter, the department shall notify the petitioner that the petition and brief have been accepted for filing, and the department shall file the petition.

(d) The petitioner may appeal to the commission a determination by the department under (c) of this section that a petition is deficient in form and content or that new authorization will be required for the filing of a corrected or completed petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.070; AS 29.06.040; AS 29.06.110; AS 29.06.480; AS 44.33.020; AS 44.33.812

3 AAC 110.450. Notice of petition

(a) No later than 45 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall

(1) publish public notice of the filing of the petition in a display ad format of no less than six inches long by two columns wide at least once each week for three consecutive weeks in one or more newspapers of general circulation designated by the department; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the territory, the department shall require the petitioner to provide notice through other means designed to reach the public;

(2) post public notice of the filing of the petition in

(A) at least three prominent locations readily accessible to the public and in or near the territory proposed for change; and

(B) other locations designated by the department;

(3) ensure that notices posted under (2) of this subsection remain posted through the deadline set under 3 AAC 110.640 by the chair of the commission for the filing of responsive briefs;

(4) hand-deliver or mail, postage prepaid, public notice of the filing of the petition, correctly addressed to the municipalities having jurisdictional boundaries within an area extending up to 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department; and

(5) submit a request for a public service announcement of the filing of the petition to at least one radio or television station serving the area of the proposed change and request that it be announced for the following 14 days.

(b) The department shall specify the text of the public notices required in (a)(1) - (a)(4) of this section, to ensure that the notices contain the following information:

(1) the title of the notice of the filing of the petition;

(2) the name of the petitioner;

(3) a description of the proposed action;

(4) a statement of the size and general location of the territory proposed for change;

(5) a map of the territory proposed for change, or information where a map of the territory is available for public review;

(6) a reference to the constitutional, statutory, and regulatory standards applicable to the commission's decision;

(7) a reference to the statutes and regulations applicable to procedures for consideration of the petition;

(8) designation of where and when the petition is available for public review;

(9) a statement that responsive briefs and comments regarding the petition may be filed with the commission;

(10) a reference to the regulations applicable to the filing of responsive briefs,

(11) the deadline for receipt of responsive briefs and comments;

(12) the mailing address, facsimile number, and electronic mail address for the submission of responsive briefs and comments to the department;

(13) a telephone number for inquiries to the commission staff.

(c) The department shall specify the text of the public service announcement required in (a)(5) of this section, to ensure that the announcement contains the following information:

(1) the title of the public service announcement;

- (2) the period during which the public service announcement is requested to be broadcast;
- (3) the name of the petitioner;
- (4) a description of the proposed action;
- (5) a statement of the size and general location of the territory proposed for change;
- (6) a statement of where and when the petition is available for public review;
- (7) a statement that responsive briefs and comments regarding the petition may be filed with the commission;
- (8) a statement of the deadline for responsive briefs and comments;
- (9) a statement of where the complete notice of the filing may be reviewed;
- (10) a telephone number for inquiries to the petitioner.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812

3 AAC 110.460. Service of petition

(a) No later than 25 days after receipt of the department's notice of acceptance of the petition for filing, the petitioner shall hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within an area extending 20 miles beyond the boundaries of the territory proposed for change, and to other interested persons and entities designated by the department. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

(b) From the first date of publication of notice of the filing of the petition under 3 AAC 110.450(a) (1), through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction, the petitioner shall make a full set of petition documents, including public notices, responsive briefs, the reply brief, and department reports, available for review by the public at a central and convenient location such as a municipal office or public library. The petition documents must be available for review during normal working hours, and the petitioner shall accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days. All published and posted notices of filing of a petition must identify the specific location of the petition documents, and the hours when the documents can be reviewed.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812

3 AAC 110.470. Proof of notice and service

No later than 50 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall deliver to the department five additional complete sets of petition documents and an affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 - 3 AAC 110.460 have been satisfied. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812

3 AAC 110.480. Responsive briefs and written comments

(a) If an interested person or entity seeks to participate as a respondent to a petition, that person or entity must have the capacity to sue and be sued, and must file with the department an original and five complete copies of a responsive brief containing facts and analyses favorable or adverse to the petition. If the respondent is a group, the group shall designate one person to represent the group. Copies of the responsive briefs, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics. The respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(b) The responsive brief, and any companion exhibits, must be filed with an affidavit by the respondent that, to the best of the respondent's knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) A responsive brief must be received by the department in a timely manner in accordance with 3 AAC 110.640. A responsive brief must be accompanied by an affidavit of service of two copies of the brief on the petitioner by regular mail, postage prepaid, or by hand-delivery.

(d) An interested person or entity may file with the department written comments supporting or opposing the petition. Upon receiving those comments, the department shall provide promptly a copy of the written comments to the petitioner by hand-delivery, electronic mail, facsimile, or postage-prepaid mail. If the written comments, including attachments, exceed 20 pages or if they include colored materials or materials larger than 11 inches by 17 inches, the correspondent shall provide an additional five complete sets of the written comments to the department. Copies of the written comments, including attachments, must conform to the original in color, size, and other distinguishing characteristics. Written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.05.100; AS 29.06.040; AS 29.06.110; AS 29.06.130; AS 29.06.480; AS 29.06.500; AS 44.33.812

3 AAC 110.490. Reply brief

The petitioner may file an original and five copies of a single reply brief in response to all responsive briefs and written comments filed timely under 3 AAC 110.480. The petitioner shall provide the department with a copy of the reply brief in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. The reply brief must be received by the department in a timely manner in compliance with 3 AAC 110.640. The reply brief must be accompanied by an affidavit of service of the brief on all respondents by regular mail, postage prepaid, or by hand-delivery.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.05.100; AS 29.06.040; AS 29.06.110; AS 29.06.130; AS 29.06.480; AS 29.06.500; AS 44.33.812

3 AAC 110.500. Limitations on advocacy

(a) Unless otherwise ordered by the commission, for good cause shown, the commission will not, and the department may not, accept a document, letter, or brief for filing and consideration except in accordance with the procedures, timeframes, hearings, and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.05.100; AS 29.06.040; AS 29.06.110; AS 29.06.130; AS 29.06.480; AS 29.06.500; AS 44.33.812

3 AAC 110.510. Informational sessions

(a) If the department determines that persons or entities within or near the area of the proposed change have not had adequate opportunity to be informed about the scope, benefits and detriments of the proposed change, the department shall require the petitioner to conduct informational sessions, and to submit a recording, transcription, or summary of those sessions to the department.

(b) The department may not proceed with the processing of the petition until the petitioner has certified, by affidavit, that the informational session requirements of this section have been met.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.05.100; AS 29.06.040; AS 29.06.110; AS 29.06.130; AS 29.06.480; AS 29.06.500; AS 44.33.812

3 AAC 110.520. Departmental public meetings

(a) During its investigation and analysis of a petition for incorporation, the department shall convene at least one public meeting in the territory proposed for incorporation. During its investigation and analysis of a petition for a change other than incorporation, the department may convene at least one public meeting in or near the territory proposed for change.

(b) Notice of the date, time and place of the public meeting under (a) of this section must be mailed, postage prepaid, to the petitioner and to each respondent at least 15 days before the public meeting. The department shall publish the notice at least once each week, for two consecutive weeks, immediately preceding the date of the meeting, in a newspaper of general circulation selected by the department to reach the people and entities within or near the area of the proposed change. If the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the area of the proposed change, the department shall provide notice through other means designed to reach the public. The petitioner shall post notice of the meeting in at least three prominent locations readily accessible to the public in or near the territory proposed for change, and at the same location where the petition documents are available for review, for at least 14 days immediately preceding the date of the meeting. On or before the date of the public meeting, the petitioner shall submit to the department an affidavit certifying that the posting requirements of this subsection have been met.

(c) Staff assigned to the commission shall preside at the public meeting. If the public meeting is held within the time period established under 3 AAC 110.640 for receiving written comments, the presiding staff person shall accept written materials submitted at the public meeting. However, except in extraordinary circumstances, the petitioner and the respondents may not submit further written materials at the meeting. The public meeting shall be recorded and summarized in the report with recommendations of the department prepared under 3 AAC 110.530.

(d) The department may postpone the time or relocate the place of the public meeting by conspicuously posting notice of the postponement or relocation at the original time and location of the public meeting, if the meeting is relocated within the same community or territory, and is rescheduled no more than 72 hours after the originally scheduled time.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 Authority: Art. X, sec. 12, Ak Const.; AS 29.05.080; AS 29.06.040; AS 29.06.090; AS 29.06.110; AS 29.06.480; AS 44.33.812

3 AAC 110.530. Departmental report

(a) The department shall investigate and analyze a petition filed with the department under this chapter, and shall submit to the commission a written report of its findings with recommendations regarding the petition.

(b) The department shall mail to the petitioner and respondents its preliminary report with recommendations before submitting its final report with recommendations to the commission. Within 24 hours after receipt of the preliminary report with recommendations, the petitioner shall place a copy of the report with the petition documents available for review.

(c) The petitioner, respondents, and other interested persons may submit to the department written comments pertaining directly to the preliminary report with recommendations. The written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

(d) In its final written report with recommendations, the department shall consider timely submitted written comments addressing the preliminary report with recommendations.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.080; AS 29.06.040; AS 29.06.110; AS 29.06.490; AS 44.33.812

3 AAC 110.540. Amendments and withdrawal

(a) A petitioner may amend or withdraw the original petition at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. The original and five copies of the amendment or withdrawal must be filed with the department. The petitioner shall provide the department with a copy of the amended petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. If voters initiated the original petition,

(1) the amended petition must contain the dated signatures of the same number of voters required by AS 29.04, AS 29.05, AS 29.06, or this chapter for the original petition, and must include the dated signatures of at least a majority of the same voters who signed the original petition; and

(2) a statement withdrawing a petition must contain the dated signatures of at least 30 percent of the voters residing in the area of the proposed change, and must include at least a majority of the same voters who signed the original petition.

(b) A petitioner shall serve the amended petition on each person and entity designated by the department, and by 3 AAC 110.400 - 3 AAC 110.660 to receive the original petition, and on the respondents to the original petition. A petitioner shall place a copy of the amended petition with the original petition documents, post the public notice of the amended petition, and submit an affidavit of service and notice in the same manner required for the original petition.

(c) The chair of the commission may determine whether the amendment is significant enough to warrant an informational session, opportunity for further responsive briefing, an additional public meeting by the department, or a repeat of any other step or process specified in 3 AAC 110.400 - 3 AAC 110.660. Additional informational sessions, meetings, briefings, or other steps or processes will be conducted in accordance with the procedures specified in 3 AAC 110.400 - 3 AAC 110.660 for the processing of the original petition, except that the chair of the commission may shorten the timing.

(d) A petitioner may not amend or withdraw the original petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition, except upon a clear showing to the commission that the public interest of the state and of the persons and entities within or near the area of the proposed change is best served by allowing the proposed amendment or withdrawal.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.060; AS 29.06.040; AS 29.06.090; AS 29.06.100; AS 29.06.450; AS 29.06.460; AS 44.33.812; AS 44.33.814

3 AAC 110.550. Commission public hearing

(a) The commission will convene one or more public hearings at convenient locations in or near the territory of the proposed change as required under AS 29.04, AS 29.05, AS 29.06, AS 44.33.810 - 44.33.828, and this chapter.

(b) Notice of the date, time, place and subject of the hearing shall be

(1) mailed, postage prepaid, by the department to the petitioner and to each respondent;

(2) published by the department at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than three inches long by two columns wide, in one or more newspapers of general circulation selected by the department to reach the people in the territory; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the territory, the department shall provide notice through other means designed to reach the public; and

(3) posted by the petitioner in at least three prominent locations readily accessible to the public in the area in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.

(c) The department shall submit a request for a public service announcement of the hearing notice required under this section to at least one radio or television station serving the area of the proposed change and request that it be announced during the 21 days preceding the date of the hearing.

(d) The commission may postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing, if the hearing is relocated within the same community or territory and is rescheduled no more than 72 hours after the originally scheduled time.

(e) At least 14 days before the hearing, the petitioner and each respondent shall submit to the department a list of witnesses that the respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. On the same date that the petitioner submits

its witness list to the department, the petitioner shall provide a copy of its witness list to each respondent by hand-delivery or postage-prepaid mail. On the same date that a respondent submits its witness list to the department, the respondent shall provide a copy of its witness list to the petitioner and to all other respondents by hand-delivery or postage-prepaid mail.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.090; AS 29.06.040; AS 29.06.120; AS 29.06.490; AS 44.33.812; AS 44.33.814; AS 44.33.818; AS 44.33.826

3 AAC 110.560. Commission hearing procedures

(a) The chair of the commission shall preside at the hearing, and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. The department shall record the hearing and preserve the recording. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) As part of the hearing, the commission may include

- (1) a report with recommendations from the department;
- (2) an opening statement by the petitioner, not to exceed 10 minutes;
- (3) an opening statement by each respondent, not to exceed 10 minutes;
- (4) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
- (5) sworn testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by each respondent;
- (6) sworn responsive testimony of witnesses
 - (A) with expertise in matters relevant to the proposed change; and
 - (B) called by the petitioner;
- (7) a period of public comment by interested persons, not to exceed three minutes for each person;
- (8) a closing statement by the petitioner, not to exceed 10 minutes;
- (9) a closing statement by each respondent, not to exceed 10 minutes; and
- (10) a reply by the petitioner, not to exceed five minutes.

(c) If more than one respondent participates, the chair of the commission, at least 14 days before the hearing, may establish for each respondent time limits on the opening and closing statements that are lower than those time limits set out in (b) of this section.

(d) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission may call additional witnesses.

(e) A brief or document may not be filed at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents, and for consideration in the reports with recommendations of the department.

(f) The commission may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the commission's ability to make an informed decision.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.090; AS 29.06.040; AS 29.06.120; AS 29.06.490; AS 44.33.812; AS 44.33.814; AS 44.33.816; AS 44.33.820; AS 44.33.826

3 AAC 110.570. Decisional meeting

(a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. The commission will not receive new evidence, testimony, or briefing during the decisional meeting. However, the chair of the commission may ask the department or a person for a point of information or clarification.

(b) Three members of the commission constitute a quorum for the conduct of business at a decisional meeting.

(c) If the commission determines that a proposed change must be altered to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission may alter the proposed change and accept the petition as altered. If the commission determines that a precondition must be satisfied before the proposed change can take effect, the commission will include that precondition in its decision. A motion to alter, impose preconditions upon, or approve a proposed change requires at least three affirmative votes by commission members to constitute approval.

(d) If the commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission will reject the proposed change. If a motion to grant a proposed change receives fewer than three affirmative votes by commission members, the proposed change is rejected.

(e) The commission will keep written minutes of a decisional meeting. Each vote taken by the commission will be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will file as a public record a written statement explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, respondents, and other interested persons requesting a copy. The department shall execute and file an affidavit of mailing as a part of the public record of the proceedings.

(g) Unless reconsideration is requested timely under 3 AAC 110.580 or the commission, on its own motion, orders reconsideration under 3 AAC 110.580, a decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid to the petitioners and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812; AS 44.33.814; AS 44.33.816; AS 44.33.818; AS 44.33.820; AS 44.33.822; AS 44.33.826

3 AAC 110.580. Reconsideration

(a) Within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person or entity may file an original and five copies of a request for reconsideration of all or part of that decision, describing in detail the facts and analyses that support the request for reconsideration.

(b) Within 20 days after a written statement of decision is mailed under 3 AAC 110.570(f) , the commission may, on its own motion, order reconsideration of all or part of that decision.

(c) A person or entity filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in an electronic format, unless the department waives this requirement because the person or entity requesting reconsideration lacks a readily accessible means or the capability to provide items in an electronic format. A request for reconsideration must be filed with an affidavit of service of the request for reconsideration on the petitioner and each respondent by regular mail, postage prepaid, or by hand-delivery. A request for reconsideration must also be filed with an affidavit that, to the best of the affiant's knowledge, information, and belief, formed after reasonable inquiry, the request for reconsideration is founded in fact, and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(d) If the person or entity filing the request for reconsideration is a group, the request must identify a representative of the group.

(e) The commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision if the commission determines that

(1) a substantial procedural error occurred in the original proceeding;
(2) the original vote was based on fraud or misrepresentation;
(3) the commission failed to address a material issue of fact or a controlling principle of law; or

(4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

(f) If the commission does not act on a request for reconsideration within 20 days after the decision was mailed under 3 AAC 110.570(f) , the request is automatically denied. If it orders reconsideration or grants a request for reconsideration within 20 days after the decision was mailed under 3 AAC 110.570(f) , the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered. The petitioner or respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the petitioner or respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(g) Within 90 days after the department receives timely filed responsive briefs, the commission, by means of the decisional meeting procedure set out in 3 AAC 110.570(a) - (f), will issue a decision on reconsideration. A decision on reconsideration by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812; AS 44.33.814; AS 44.33.820; AS 44.33.822; AS 44.33.826

3 AAC 110.590. Certain local action annexations

(a) Except as otherwise provided in this section, if a petition is filed with the department under a local action method provided for in AS 29.06.040 (c)(2) or (c)(3) for annexation of

adjacent municipally owned property or adjacent property by unanimous consent of voters and property owners, only the following procedures specified in 3 AAC 110.400 - 3 AAC 110.660 are required:

- (1) filing a petition under 3 AAC 110.420;
 - (2) technical review of the petition under 3 AAC 110.440;
 - (3) notice and service of the petition under 3 AAC 110.450 - 3 AAC 110.470;
 - (4) responsive briefs and comments under 3 AAC 110.480, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of responsive briefs and comments to 14 days from the date of first publication of the notice of filing of the petition;
 - (5) a reply brief under 3 AAC 110.490, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of a reply brief to seven days from the date that the petitioner received the responsive brief;
 - (6) a departmental report under 3 AAC 110.530, except that the department shall issue only one report concerning the local action annexation proposal at least 21 days before the public hearing under 3 AAC 110.550; interested persons may submit written comments to the department on its report no later than seven days before the public hearing;
 - (7) the commission's public hearing under 3 AAC 110.550, except that the commission may conduct the hearing by teleconference;
 - (8) the decisional meeting under 3 AAC 110.570;
 - (9) reconsideration under 3 AAC 110.580.
- (b) The commission may expand local action procedures for annexations under (a) of this section, so that those procedures include other requirements of 3 AAC 110.400 - 3 AAC 110.660, such as informational sessions, and public meetings and hearings, if the commission determines that the best interests of the state will be enhanced.
- (c) The commission may relax, reduce, or eliminate the notice and service requirements of 3 AAC 110.450 - 3 AAC 110.470 if the commission determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.
- (d) Repealed 5/19/2002.
- (e) If the commission determines that the balanced best interests of the locality and the state are enhanced by statewide participation, the commission may convert a local action petition for an annexation described in (a) of this section to a legislative review petition.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 29.06.090; AS 29.06.450; AS 44.33.812; AS 44.33.814; AS 44.33.818; AS 44.33.826

3 AAC 110.600. Local action/local option elections

(a) In accordance with AS 29.04, AS 29.05, and AS 29.06, the commission will notify the director of elections of its acceptance of a local action or local option petition proposing city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal dissolution, merger, or consolidation under AS 29.06.

(b) If AS 29.06.040 requires a municipal election for a proposed annexation or detachment, the commission will notify the clerk of the municipality proposed for change of the commission's acceptance of a local action petition. The election must be administered by the municipality proposed for change at the municipality's own cost, and in the manner prescribed

by its municipal election ordinances, except that the commission may specify the wording of the ballot measure and broaden the election notice requirements.

(c) Under AS 29.06.040 (c) and AS 44.33.812 (a)(2), the commission may approve a petition for annexation subject only to approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the annexing municipality. If the territory proposed for annexation is uninhabited, the commission may approve a petition for annexation of that territory subject only to approval by a majority of the voters who vote on the question within the annexing municipality.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.110; AS 29.05.120; AS 29.06.040; AS 29.06.140; AS 29.06.510; AS 44.33.812

3 AAC 110.610. Legislative review

(a) The commission may determine during the course of proceedings that a legislative review petition must be amended and considered as a local action or local option petition, if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.

(b) If a decision of the commission requires legislative review, the commission will present a recommendation for the decision to the legislature during the first 10 days of a regular session in accordance with art. X, sec. 12, Constitution of the State of Alaska.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.06.040; AS 29.06.090; AS 29.06.450; AS 44.33.812; AS 44.33.822; AS 44.33.826; AS 44.33.828

3 AAC 110.620. Judicial review

A final decision of the commission made under AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62).

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.130; AS 29.06.500; AS 44.33.812

3 AAC 110.630. Effective date and certification

(a) Except as provided in (b) or (c) of this section, a final decision of the commission is effective when

(1) notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice;

(2) certification of the legally required voter approval of the commission's final decision is received from the director of elections or the appropriate municipal official; and

(3) 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision.

(b) The effective date of a merger or consolidation is the date set by the director of elections for the election of officials of the remaining or new municipality, if the provisions of (a) of this section have also been satisfied.

(c) The commission may defer the effective date of a city reclassification under AS 29.04, municipal incorporation under AS 29.05, or municipal annexation, detachment, merger, consolidation, or dissolution under AS 29.06 for a period of no more than two years.

(d) When the requirements in (a) of this section have been met, the department shall issue a certificate describing the effective change. The department shall hand-deliver or mail, postage prepaid, a copy of the certificate to the municipality that has been changed, and shall file a copy of the certificate in each recording district of all territory within the municipality that has been changed.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.120; AS 29.06.040; AS 29.06.140; AS 29.06.510; AS 44.33.812; AS 44.33.828

3 AAC 110.640. Scheduling

(a) The chair of the commission shall set or amend the schedule for action on a petition.

(b) In a schedule under (a) of this section, and except as provided by 3 AAC 110.590 for certain local action annexations, the chair of the commission shall allow at least

(1) 49 days after the date of initial publication or posting of notice of the filing of a petition, whichever occurs first, for receipt by the department of a responsive brief or written comments concerning the petition;

(2) 14 days after the date of service of a responsive brief on the petitioner for the receipt by the department of a reply brief from the petitioner;

(3) 28 days after the date of mailing of a departmental preliminary report with recommendations to the petitioner for receipt of written summary comments to the department; and

(4) 21 days between the date of mailing of a final report with recommendations by the department to the petitioner and the commission hearing on the petition.

(c) The commission may postpone proceedings on a petition that has been accepted for filing to allow concurrent consideration and action on another petition that pertains to some or all of the same territory and that has either been accepted for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated competing petition only if the anticipated competing petition is received by the department no later than 90 days after the date of the first publication of notice of the earlier petition under 3 AAC 110.450.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162; Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.070; AS 29.05.080; AS 29.05.090; AS 29.06.040; AS 29.06.090; AS 29.06.110; AS 29.06.120; AS 29.06.480; AS 29.06.490; AS 44.33.020; AS 44.33.812; AS 44.33.814; AS 44.33.826

3 AAC 110.650. Resubmittals and reversals

Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that

(1) is substantially similar to a petition denied by the commission, rejected by the legislature, or rejected by the voters during the immediately preceding 24 months; or

(2) requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding 24 months.

History: Eff. 7/31/92, Register 123; Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.090; AS 29.06.130; AS 29.06.450; AS 29.06.500; AS 44.33.812

Publisher's note: The authorities list is set out above to reflect changes from the list set out in the main pamphlet.

3 AAC 110.660. Purpose of procedural regulations; relaxation or suspension of procedural regulation

The purpose of the procedural requirements set out in 3 AAC 110.400 - 3 AAC 110.660 is to facilitate the business of the commission, and will be construed to secure the reasonable, speedy, and inexpensive determination of every action and proceeding. Unless a requirement is strictly provided for in the Constitution of the State of Alaska, AS 29, or AS 44.33.810 - 44.33.849, the commission may relax or suspend a procedural regulation if the commission determines that a strict adherence to the regulation would work injustice, would result in a substantially uninformed decision, or would not serve relevant constitutional principles and the broad public interest.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.06.040; AS 29.06.090; AS 29.06.450; AS 44.33.812

Article 13 General Provisions

Section

- 900. Transition.
- 910. Statement of non-discrimination.
- 920. Determination of community.
- 970. Determination of essential city or borough services.
- 980. Determination of best interests of the state.
- 990. Definitions.

3 AAC 110.900. Transition

(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.100; AS 29.05.130; AS 29.05.140; AS 29.06.040; AS 29.06.090; AS 29.06.130; AS 29.06.150; AS 29.06.160; AS 44.33.812

3 AAC 110.910. Statement of non-discrimination

A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

History: Eff. 7/31/92, Register 123 | Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

Publisher's note: The authorities list is set out above to reflect changes from the list set out in the main pamphlet.

3 AAC 110.920. Determination of community

(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether the

- (1) settlement is inhabited by at least 25 individuals;
- (2) inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and

- (3) inhabitants residing permanently at a location are a discrete and identifiable social unit, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

- (1) public access to or the right to reside at the location of the population is restricted;

- (2) the population is adjacent to a community and is dependent upon that community for its existence; or

- (3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

3 AAC 110.970. Determination of essential city or borough services

(a) If a provision of this chapter provides for the identification of essential borough services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

- (1) are reasonably necessary to the territory; and
- (2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(b) The commission may determine essential borough services to include

- (1) assessing and collecting taxes;
- (2) providing primary and secondary education;
- (3) planning, platting, and land use regulation; and
- (4) other services that the commission considers reasonably necessary to meet the

borough governmental needs of the territory.

(c) If a provision of this chapter provides for the identification of essential city services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

- (1) are reasonably necessary to the community; and
- (2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(d) The commission may determine essential city services to include

- (1) levying taxes;
- (2) for a city in the unorganized borough, assessing and collecting taxes;
- (3) for a first class or home rule city in the unorganized borough, providing primary and secondary education in the city;
- (4) public safety protection;
- (5) planning, platting, and land use regulation; and
- (6) other services that the commission considers reasonably necessary to meet the local governmental needs of the community.

History: Eff. 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.011; AS 29.05.031; AS 29.05.100; AS 29.06.040; AS 29.06.090; AS 29.06.130; AS 29.06.450; AS 29.06.500; AS 44.33.812

3 AAC 110.980. Determination of best interests of the state

If a provision of AS 29 or this chapter requires the commission to determine whether a proposed municipal boundary change or other commission action is in the best interests of the state, the commission will make that determination on a case-by-case basis, in accordance with applicable provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, and this chapter, and based on a review of

- (1) the broad policy benefit to the public statewide; and

- (2) whether the municipal government boundaries that are developed serve
 - (A) the balanced interests of citizens in the area proposed for change;
 - (B) affected local governments; and
 - (C) other public interests that the commission considers relevant.

History: Eff. 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 29.04.040; AS 29.05.011; AS 29.05.031; AS 29.05.100; AS 29.06.040; AS 29.06.090; AS 29.06.130; AS 29.06.450; AS 29.06.500; AS 44.33.812

3 AAC 110.990. Definitions

Unless the context indicates otherwise, in this chapter

- (1) "borough" means a general law borough, a home rule borough, or a unified municipality;
- (2) "coastal resource service area" means a service area established and organized under AS 29.03.020 and AS 46.40.110 - 46.40.180;
- (3) "commission" means the Local Boundary Commission;
- (4) "commissioner" means the commissioner of community and economic development;
- (5) a "community" means a social unit comprised of 25 or more permanent residents as determined under 3 AAC 110.920;
- (6) "contiguous" means, with respect to territories and properties, adjacent, adjoining, and touching each other;
- (7) "department" means the Department of Community and Economic Development;
- (8) "mandatory power" means an authorized act, duty, or obligation required by law to be performed or fulfilled by a municipality in the course of its fiduciary obligations to citizens and taxpayers; "mandatory power" includes one or more of the following:
 - (A) assessing, levying, and collecting taxes;
 - (B) providing education, public safety, public health, and sanitation services;
 - (C) planning, platting and land use regulation;
 - (D) conducting elections; and
 - (E) other acts, duties, or obligations required by law to meet the local governmental needs of the community;
- (9) "model borough boundaries" means those boundaries set out in the commission's publication Model Borough Boundaries, revised as of June 1997 and adopted by reference;
- (10) "permanent resident" means a person who has maintained a principal domicile in the territory proposed for change under this chapter for at least 30 days immediately preceding the date of acceptance of a petition by the department, and who shows no intent to remove that principal domicile from the territory at any time during the pendency of a petition before the commission;
- (11) "political subdivision" means a borough or city organized and operated under state law;
- (12) "property owner" means a legal person holding a vested fee simple interest in the surface estate of any real property including submerged lands; "property owner" does not include lienholders, mortgagees, deed of trust beneficiaries, remaindermen, lessees, or holders of unvested interests in land;
- (13) "regional educational attendance area" means an educational service area established and organized under AS 14.08 and AS 29.03.020 ;

(14) "witnesses with expertise in matters relevant to the proposed change" means individuals who are

(A) specialists in relevant subjects, including municipal finance, municipal law, public safety, public works, public utilities, and municipal planning; or

(B) long-standing members of the community or region that are directly familiar with social, cultural, economic, geographic, and other characteristics of the community or region.

History: Eff. 7/31/92, Register 123; am 5/19/2002, Register 162 | Authority: Art. X, sec. 12, Ak Const.; AS 44.33.812

Editor's note: The Local Boundary Commission's publication Model Borough Boundaries, adopted by reference in 3 AAC 110.990, is on file at the offices of the Local Boundary Commission staff, Department of Community and Economic Development, 550 W. 7th Ave., Suite 1770, Anchorage, Alaska, and is available at the web site of the Department of Community and Economic Development, at www.dced.state.ak.us/cbd/lbc/lbc.htm.

